This book undertakes to call attention, in a simple way, to the principles on which the American government rests, and is written not only for those who would make a detailed study of this subject, but for all who are interested in the essentials of the government of our country.

By FRANCIS N. THORPE

THE GOVERNMENT OF THE PEOPLE OF THE UNITED STATES

FRANKLIN AND THE UNIVERSITY OF PENNSYLVANIA

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THE ESSENTIALS OF AMERICAN CONSTITUTIONAL LAW

THE ESSENTIALS OF AMERICAN GOVERNMENT

The Essentials of American Government

By

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Made in the United States of America

* AD * JUVENES *
* LEGUM * STUDIOSOS *
* QUANDO *
* ADVOCATOS * JUDICES *
* LEGISLATORES *
* HODIE *
* ANNORUM * AMICOS *
* HIC * LIBELLUS *
* DEDICATUS *

The principle of representation is the pivot on which the American and all other Republics move.

—*The Federalist*, LXIII.

"For one may not imagine man's unjust decrees to be laws· all men defining law to arise out of the fountain of justice."

—Cicero, *De Legibus*, I.

"The wise man is the State."—Emerson, *Politics*.

SUGGESTIONS

It is somewhat presumptuous to attempt to reduce American Government to its essential principles. The subject is difficult—more or less technical and quite beyond the compass of any one book. Therefore, in writing the present volume, the author cites many books in which the matter under immediate consideration is discussed at length. The rule of rules for the student of American government is *Multum*, not *Multa*. There is peril, if only the principle be considered, that what knowledge is gained will be an acquaintance with abstractions; if the example, or illustration alone is considered, the peril is of a memory of facts more or less temporary, or isolated. Government is essentially organic in nature and must be studied as an organism.

In order to make possible a fair knowledge of our government in its various forms or applications, a person should have experience in its

operations—but such experience is practically possible for few. Knowledge must be gained from books, or from intercourse with officials, or from observation of the workings of government in its numberless details—and such knowledge is possible to few. Therefore books remain the principle source of information. A brief selection of authoritative books on the subject in hand is given at the close of the present volume, and references to such books are freely made in the several chapters. There is a large mass of current publications on the subject, varying from the *Congressional Record*, to editorials, pamphlets, and articles in newspapers and magazines. Important contributions to an understanding of American Government are the utterances, printed or oral, characteristic of any political campaign. The available sources of information concerning government in America are therefore innumerable. The present work—*The Essentials of American Government*—undertakes to call attention, in a simple way to the principles on which that government rests. These principles are few in number; the application of them is various; the examples are innumerable. That person understands American Government who

knows the principle exemplified by any operation of it. It is possible to know the particular operation and not to understand the principle.

If this volume is used as a textbook, the instructor will undoubtedly supplement the material here presented, with lectures discussing more or less at length, according to the time available, the essentials here presented. Thus if he uses his own information, or that conveyed in the volumes of a selected library on the subject (such as is outlined at the close of the volume) he can bring to his class a vast mass of fresh information which, given in form of lectures, may be substantially recorded by the student in his notes. A small, compact textbook which presents a general outline of the subject, placed in the hands of the student and supplemented by lectures by the instructor, with quizzes, discussions, note-taking, and examinations—oral and written—with utilization of authorities, documentary matter and readings by the student, should produce the results desired. If the book given to the student contains an excessive amount of details, the work is in peril of becoming merely of memory instead of reflection. Recitation from a textbook gives results incomparably inferior to

those to be secured from a combination of text-book lectures, notes, and the traditional discussions and examinations.

The instructor may advantageously bring into the class an authority—(be it primary as a document, or secondary as a treatise)—and read from it as may seem expedient, or he can have the passage or passages made available to the class by mimeograph or blackboard copy. The living voice of the instructor will always be found to be the most valuable organ, or instrument in instruction. It is more desirable that the student should master and understand a few things well than many things badly. The classic Socratic method of instruction by suggestive questioning has never been surpassed in value, nor wisely supplanted. It may be remembered that the student is likely to spend his life in America and should ever be increasing his possession of detailed facts about American government. If he is well grounded in the principles of that government, the details he may learn through life will arrange themselves according to these principles. Procedure of this sort in the study of American Government is precisely the procedure followed in technical schools,—such as those of Law or of

Medicine. The principles of law, illustrated by relevant cases, are essentially all that the best of Law Schools attempt to teach. It is reasonable to suppose that if a lawyer can grasp legal principles he can understand particular cases. It may well be doubted whether a multiplicity of details, complex in character and memorized more or less arbitrarily, are as educational as adequate reflection on the principles which the details merely illustrate. Whether or not the instruction in any subject be of fundamentals carefully but not too voluminously illustrated,—or be *memoriter* and encyclopedic,—and instructors appear to be divided in opinion as to the relative merits of the two methods,—this little book is written and sent forth for the use of the profession, with the appreciation of the author of the reception given his former contributions to the study of American Government,—State and National.

Francis Newton Thorpe.

University of Pittsburgh,
Department of Political Science, 1922.

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THE ESSENTIALS OF AMERICAN GOVERNMENT

THE ESSENTIALS OF AMERICAN GOVERNMENT

CHAPTER I

SOVEREIGNTY

1. In any country, government takes the form given it by the prevailing idea of sovereignty. Government means control and refers primarily to the public business. The grand movement in government,—as recorded by history, is from individualism to communism: that is, from control of human interests by one, and for one,—the individual, to control by all, for all,—the community,—the whole people. Sovereignty, therefore, has a different meaning at different times, and among different peoples. Doubtless the extreme differences in its meaning are seen in the differences between a government which is embodied in one person,—that is, an absolute monarchy; and a government which is

embodied in all persons,—that is a free democracy. Neither such a monarchy nor such a democracy exists to-day.

2. Democracy means rule or government by the people. The Constitution of the United States which defines itself as "the supreme law of the land," also declares itself as "ordained and established by the people of the United States." It also declares that "representatives" and "taxes" shall be apportioned among people of the several States, though taxes on incomes may be laid and collected without apportionment and without regard to any census.

3. Representatives are apportioned to population, and the principle of representation is the basis of American government,—Federal, State, and of course, the subdivisions of the State, counties, cities, towns, boroughs, townships, and villages. In other words, ours is a republican, or representative government. The Supreme Law of America declares that "the United States shall guarantee to each State a *republican form* of government."

4. No less an authority than Madison, in the *Federalist*,[1] the classic exposition of the meaning

[1] No. xxxix.

of the Constitution, and of the nature of our government,—explains and defines it:

5. The Constitution, or form of government under which we live, national or State, is founded on the assent and ratification of the people of America, given by their representatives elected by them for the special purpose.

6. In assenting to the Constitution, the people acted by States,—because, as Chief-Justice Marshall has said, they could act in no other way.[1] The representatives of the people, in either branch of Congress, or of the State Legislatures derive their powers from the people. So too do all governors and judges, for these also represent the people. The mere *procedure* by which a public servant attains office, whether by *direct election* by the people,—as is the case of all members of Congress and State Legislatures, also of Governors and with few exceptions, of State judges,—or by indirect election, as in case of the President of the United States; or of appointment by the President,—as in case of members of the Cabinet, of federal judges, or federal officials in any public service,—or of appointments by a governor, of whatsoever rank, is

[1] McCulloch *v.* Maryland, 4 Wheaton, 316 (1819).

essentially based upon the representative principle. The source of authority in every instance is the people. Be that authority legislative, executive, justicial, or administrative, it is created and exists by the will of the people. Lawmakers, governors, presidents, judges, administrative officials, all and each, are public servants, —chosen by the people as their agents.

7. Thus, in American government, we come to the people of the United States as the sole source of governmental authority. This profound truth is well expressed by Bryce: "To the people we come sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend."

8. Sovereignty, in America, resides in the American people. State sovereignty, in the people of a State; national sovereignty, in the people of the United States. Constitutions of government, State or national, are schemes for conducting the public business of the State, or of the United States. The sovereign people, of the State, or of the United States, limit the power of their agents,—public officials, by these constitutions. In a State constitution, the fundamental

limitation is the Bill of Rights; in the federal Constitution, the limitation is the instrument itself. The nearest approach to an unlimited grant of power by the sovereign to its agent is the Sixteenth Amendment to the Constitution of the United States. In the administration of the two governments,—the State and the Federal, each exercises delegated powers. The word "jurisdiction" is commonly used as synonymous with "sovereignty." Thus, the public jurisdiction of a State is a measure of its sovereignty. Other words are, "power," "authority," and sometimes, "right" or "rights."

9. The word "sovereignty," or "sovereign" does not occur in the Constitution of the United States. The United States is a Nation, and its existence implies sovereignty. The "police power" or "jurisdiction" of a State is sometimes called "residuary sovereignty." As yet no exact, definite, unchangeable line of demarcation has been drawn between State sovereignty, and national (federal) sovereignty. We are now prepared for the decision of the Supreme Court, as to sovereignty:[1]

[1] Yick Wo *v.* Hopkins, 118 U. S. 356 (1886) (here quoted). The grand issue, National *v.* State sovereignty, is discussed in McCul-

When we consider the nature and the theory of our institutions of government and the principles upon which these are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the plan and action of purely personal power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental right to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth "may be a government of laws and not of men." For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any

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loch *v.* Maryland, 4 Wheaton, 316. There is a vast literature on the subject. See the account *passim* in Beveridge's *Life of Marshall;* also, "The New Nationalism and Its Obligations" by R. S. Baker, in *American Bar Association Journal,* November, 1921, 601–605.

country where freedom prevails, as being the essence of slavery itself.

The actual test of all theories is made by the administration of government.[1]

10. Sovereignty in America prescribes the procedure by which constitutions, laws, judicial decisions, and (public) official appointments shall be made. Thus sovereignty determines both the substance and the form of government in America.[2]

[1] An admirable presentation of sovereignty may be found in J. W. Garner's *Introduction to Political Science* (see its Index), "Sovereignty." Marshall discriminates between Federal and State Sovereignty in McCulloch *v.* Maryland, 4 Wheaton, 316 (1819). See *id.*, 428, 429, 430. Discussion of sovereignty as applying to the Constitution of the United States recurs in the *Federalist*. See specially Nos. xxxii, xlxx, xlxxx (Lodge Edition).

[2] American history supplies many examples and illustrations. *E.g.*, the Constitution of the United States; the Louisiana Purchase; the Organization of Territories; their admission as States; the procedure in making a new, or amending an old State constitution.

CHAPTER II

THE FUNDAMENTALS OF GOVERNMENT

1. As government is the conduct of public business, and as this business concerns the people as a whole, and the people as individuals, the fundamentals of government are principles affecting the people as a whole, or as individuals.

2. The exact order of these principles may be considered as of slight importance. We are accustomed to the order observed in the Preamble to the Constitution of the United States:

(1) To establish justice.

(2) To insure domestic tranquillity.

(3) To provide for the common defense.

(4) To promote the general welfare.

(5) To secure the blessings of liberty to ourselves and our posterity.

3. These five purposes of government as set forth in the Preamble of the Federal Constitution are equally the purposes sought in every State constitution. It may be said that the purpose of

all is set forth by the first,—"to establish justice,"—for, in the American idea of government, the establishing of justice is the securing of all the other purposes. To the end that justice may be established, government in America exists. Legislatures, Governors, Presidents, Congresses, Courts of Law, and Administrative officials of whatever rank, service or department, are chosen. The failure to establish justice is the failure of government. That government has excuse for being, which establishes, or is the means of establishing justice.

4. In thus establishing justice, every power, function, or office of government is engaged.

(1) Taxes are imposed.

(2) Moneys are appropriated.

(3) Representatives, legislative, executive, judicial, administrative are chosen.

(4) Laws are made.

(5) Decisions are given by courts of law.

(6) War or peace is declared.

Indeed, the entire activity of government is a ceaseless effort to establish justice.

5. If you turn to any one of the American plans of government,—and there are forty-eight State governments and many hundreds of city

governments,—also the national government,—and these plans are the American Constitutions, city charters, and laws, you will find the same large purpose: the establishing of justice. That the American people recognize and accept this dominant, this primary principle is shown by their respect for law as interpreted by courts of law, and notably, by the Supreme Court of the United States. That Court is a constitutional court and possesses by the will of the sovereign people of the United States, supreme judicial power. Its members are called "Justices." Its presiding member is styled "Chief Justice of the United States." Consisting of nine men, this Court rules the United States. The official opinion of five of these men is the opinion of the Court. It exists,—a unique creation in government,—representative of American sovereignty, "to establish justice." Its decision in any case is final,—unless the Sovereign invalidates that opinion, as, for example, it invalidated its opinion in the Dred Scott case.[1] That decision was nullified by the adoption of the Thirteenth,

[1] Dred Scott *v.* Sanford, 19 Howard, 393 (1857); so Chisholm *v.* Georgia, 2 Dallas, 419 (1793) was nullified by the adoption of the Eleventh Amendment.

Fourteenth, and Fifteenth Amendments. The sovereign in America is not easily aroused. But aroused, he dictates the supreme law.

6. In establishing, or attempting to establish justice, the American people, organized by States express their will by the ballot,—as nation, state, county, city, township, town, municipality of whatever sort. The miscarriage of justice,—in our common speech,—refers to errors, or seeming errors, in strictly judicial proceedings; but in a large, and equally correct sense, justice may be missed or ignored by lawmakers, governors, or administrative officials.

7. There is a maxim of law that every legal wrong has a legal remedy. This maxim, which points to a principle of government in America, may be better understood by means of illustrations. Thus our legislatures consist of two branches or houses. A bill or resolution is thus considered by two independent bodies. Having passed these bodies, the bill goes to the executive for his approval. He (influenced more or less by his Cabinet, or Council of Advisors) approves or disapproves the bill,—thus subjecting it to a third test. If passed by the legislature over his veto (disapproval,—for which he sets forth his

reasons) it is again subject to scrutiny. But the test does not necessarily stop here. The large question may be raised, in the prescribed way, "Has the legislature power to enact this law?" a question which only a Court of Law can answer,—and a Court of law "hears before it condemns; proceeds upon inquiry, and renders judgment only after trial."[1]

8. Thus the legality (constitutionality) of the law is authoritatively known. It will be noted that the supreme test is that of *power*, which means, Has the American sovereign, the people of the United States (or of a State) empowered the Legislature to enact this (so-called) law? And no other final test is possible, according to the American system of government. That the sovereign people could empower (say) Congress to enact such a "law" as the "Civil Rights Bill" (April 9, 1866; March 1, 1895),[2] and having empowered Congress to enact such a law, such a law was enacted, the constitutionality of such a law would be sustained by the Supreme Court,—*because Congress was empowered to make such a law.*

9. Thus the constitutionality of our laws

[1] Webster, in the Dartmouth College Case.

[2] Declared unconstitutional, U. S. *v.* Stanley, 109 U. S. 3 (1883).

depend, primarily, on the delegation of power, by the sovereign people, to enact such laws. And by our system of government, our courts of law decide whether a legislative body has power (so delegated) to enact such laws.[1] The conclusion inevitable from these conditions is that the sovereign power in a state (whatever it be,—nation, commonwealth, empire, &c.) declares, determines, establishes, what is justice, domestic tranquillity, common defense, general welfare, and ideas of liberty. We get back to sovereignty whenever we trace the fundamentals of government to their source. Whatever sovereignty declares is justice, or any other fundamental right, is—legally speaking, that fundamental right.[2]

[1] The principle is discussed by Marshall in Marbury *v.* Madison, 1 Cranch, 137 (1803).

[2] The question of what are the fundamentals of government involves ethics. Government rests, or is supposed to rest, on morals. That which is legally right may not seem (or be) morally right. All moral wrongs (to attempt a synonym for immoral acts) do not have legal remedies. Decisions of courts of law are legal decisions. Grave difficulties emerge in politics, as in ethics, theology, or any aspect of philosophy. But sovereignty establishes the fundamentals in ethics, politics, theology, or any aspect of philosophy. But what is sovereignty? Is it a convention agreed upon? The instructor may profitably take up any of the powers of Congress (Article I., Section 8) or similar provisions in a State constitution, and note relations to fundamental principles of "a republican form of government."

CHAPTER III

THE AMERICAN STATE

1. The State, or Commonwealth, as the word is used in American law and government is "a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written Constitution, and established by the consent of the governed. It is the union of such States, under a common constitution, which forms the distinct and greater political unit, which that Constitution designates as the United States, and makes of the people and States which compose it, one people and one country. . . . The Constitution, in all its provisions, looks to an indestructible Union of indestructible States."[1] The Constitution was made for States, not for cities or territories. Indeed, the three elements considered by the Constitution are the States, the United States, and the citizen.

[1] Texas *v.* White, 7 Wallace, 700 (1868).

2. The several States which comprise the Union are individually equal as civil and political entities. This equality is not and could not be geographical, or in wealth, or in population. The Constitution, guaranteeing to each State a republican form of government, recognizes it as a civil and political entity, apportioning representatives among the States according to their respective populations. This means that the basis of representation of a State in Congress is persons, not things.

3. Within a State, persons, not things, are also the basis of representation. Thus fundamentally, the basis of government in America both State and federal is persons. It is important that this fact be clearly understood.

4. Seemingly the representation of the States, as such equally, in the Senate of the United States,—a representation defined in the Constitution as a State's "equal suffrage in the Senate"[1] is not of persons, but of corporations,—because every State is a public corporation, and, in law, a corporation is an artificial, not a natural person.

5. But an American State is "a political

[1] Article V.

community of free citizens,"—and as such has representation in the persons of its two Senators. For many purposes a State is a corporation; but as a community represented in the Congress, it is a number of free citizens or persons. The election of United States Senators by popular vote (Seventeenth Amendment),[1] instead of by vote of a State Legislature (Article V., 3), complies with the fundamental principle of a representative democracy, as defined by Madison. The change from the original method of choosing Senators is a change in mere method not a change in principle. The Senators represent all the people within the State. So too do the members of the House of Representatives, in the aggregate. A State is apportioned its number of House members. Whether this number shall be apportioned to subdivisions of the State, or shall be apportioned to the people of the State as a whole,—that is,—whether the State shall be subdivided into Congressional Districts,—the people of a District electing a Representative (Congressman) or whether the State shall be one District and its people elect its entire number of Congressmen,—or whether the State shall be

[1] Article V.

districted and a part of its number of Representatives be so elected, and the remaining number be elected on a general ticket, as "Congressmen at large," chosen by the people of the States as one District, rests wholly with the State Legislature.

6. A similar practice may prevail for the election of presidential electors. The State Legislature is a parliamentary body on the same model as the Congress of the United States. It is a constitutional, not a statutory body, *i.e.*, its existence, organization, term, and powers are defined by the State Constitution, not by an act of the Legislature.

7. As the State constitution is, with the Constitution of the United States and acts of Congress and treaties made in conformity to the federal Constitution,—the Supreme Law of the State,—the people of the State in making its constitution, provide somewhat in detail, for a Legislative, an Executive, and a Judiciary, securing beyond change,—as far as possible, the essential organization, term, and powers of these departments of government. As population changes and conditions cannot be anticipated, the laws regulating representation, whether of

the people of a State in the federal legislature, or in a State Legislature are statutory rather than constitutional. Thus the State Legislature districts the State for various representative purposes, into

(1) Congressional Districts.
(2) (State) Senatorial Districts,
(3) Assembly Districts,
(4) (State) Judicial Districts,
(5) (Possibly) Presidential Electional Districts.

8. The fundamental here is representation. The principle as applied in the judicial districting is a matter of jurisdiction. The judiciary whose jurisdiction is the entire State is elected by the people of the entire State, as one district. Judges whose jurisdiction is limited to a portion of a State are elected by the people[1] within that portion, or Judicial District, be it one or more counties. But a county is not divided. Every county is a civil entity, having its county-seat, its judicial equipment,—court-house, law-library, court officials, and records. A Law Court is held in every county, though it be part of a

[1] In Massachusetts, New Jersey and Florida the Governor appoints the judges. (But see as to Florida, Constitution, 1885, Art. V., Sec. 8, by which the Governor appoints only the Circuit judges.)

judicial district. Whatever method of establishing courts of law may obtain in a State, it is fundamentally elective. As in the federal Government so in the State, there are no offices for life. In Massachusetts as in the appointment by the President, the judges hold office "during good behavior," but such a term is not a term for life. The holder of such an office is subject to removal according to law. If he held an office for life, he could not be removed.

The principle here is common to every office in the American system of government. Madison expresses the principle: the government, State and federal, is administered "by persons holding their offices during pleasure, for a limited period, or during good behavior."

9. Here, too, is applied the principle of agency. In a State, its governor, its legislators, its judges, its administrative officials are agents of the people. They exercise, as such agents, executive, legislative, judicial, and administrative powers delegated to them by the sovereign "the people of the State."

The States stand in like and equal relations to the United States,—called federal relations, and each State to every State in the Union, in

the same relations, called inter-State relations. Thus, irrespective of population, wealth, area, or location the States comprising the American Union are on the same footing in every governmental sense. This means the equality of the several States. Reduced to precision,—this equality is a legal equality. It is the equality signified by the Constitution of the United States: "The United States shall guarantee to every State in this Union a republican form of government."[1] And again, the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."[2]

10. Indeed, whatsoever the Supreme Law of the Land prescribes as to the States, the equality of the States is expressed or implied. No two States are equal in any respect save in legal rights. This equality conforms to the primary purpose of American government,—"to establish justice."

11. The organization of government in the respective States varies in many details of method, but agrees in principle and consequently in purpose.

12. Every State is subdivided into counties.

[1] Art. IV., Sec. 4. [2] Art. IV., Sec. 2: 1.

Each county is also a public corporation. It has its complement of officials,—executive, legislative, judicial, administrative,—all agents of the people. But the county is a part—a subordinate division of the State. Excepting officials whose jurisdiction is greater than the county,—such as the governor, the supreme (superior?) court judges, legislators chosen in a district of which the county is only a part,—all officials having authority in a county are elected (directly or indirectly) by the people of the county. But all county officials are State officials to the extent that in the execution of their offices they are backed by the power of the whole State. For example, sheriffs, county commissioners, county judges are, in this sense, State officials. Every State save one[1] is subdivided into counties and new counties are created by the Legislature. A county is a public corporation, has no executive, other than the governor of the State, and has no self-government ("home-rule"). It is essentially

[1] Louisiana is subdivided into parishes. County government has been called "the jungle of American politics." So various is the government of counties in America, the instructor may advantageously consider specially the actual county government within his own State. Thus,—as to classification of counties; the list and the particular functions of county officials; overlapping offices; "graft"; county taxes, and uses and appropriations of county moneys, etc.

an administrative unit within the State and for political purposes is (in whole or part) a legislative (assembly, senatorial), or judicial district. The State Legislature locates the county seat. The people, usually by direct election, give the control of county affairs to a group of administrative officials: the county board (supervisors, commissioners) who (in some States) levy taxes, and (in all States) have control of public works, public buildings, bridges and highways, the care of the county poor; the sheriff, county clerk, registrar of deeds, county (district) attorney, treasurer, coroner (and other officials). In New York City, Philadelphia, Chicago, Boston, St. Louis, Pittsburgh, and some other large cities, county and municipal government are somewhat combined, resulting in civil confusion. If county government in America is to any extent mediocre, the evil is due to the people themselves who elect, or suffer to be elected, mediocre county officials.

13. A county usually contains incorporated cities or towns each possessing and exercising local government. The authority for such "home rule" may be constitutional or statutory.[1]

[1] See Chapter VI, "Cities."

The United States is an indestructible union of indestructible States.

14. This means also that the States are as necessary to the Union as the Union is to the States. When the Constitution of the United States was adopted, all the States had governments. As the United States by its Constitution), bound itself to guarantee to each State a republican form of government, the guarantee implies that the several States,—then thirteen in number,—had such a government. These governments the Constitution of the United States did not change. "They were accepted precisely as they were and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution."[1]

15. Each State is an independent govern-

[1] Minor *v.* Hippersett, 21 Wallace, 182 (1874). See also Luther *v.* Borden, 7 Howard, 1 (1848); Texas *v.* White, 7 Wallace, 700 (1868). The constitutions (forms of government) of all the States are given in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories,* and *Colonies Now or Heretofore Forming the United States of America,* compiled and edited (by the author) under the Act of Congress of June 30, 1906. Washington Government Printing Office, 1909, 7 vols.

mental power, within its own jurisdiction. No State is a nation, nor does it stand in any international relations. Precisely what constitutes the jurisdiction of an American State is indefinable.[1] This jurisdiction is determinable from (a) the Constitution of the United States, and (b) the constitution of the State. It is fundamentally a judicial question. Entering into the solution of the question, however, is public opinion, politics,—*i.e.*, law and custom.

16. Were we to enter into detail, in the matter of State government, we would discover everywhere the presence and the operation of the principle of representation.[2]

[1] Practically the powers—or jurisdiction of an American Commonwealth—are determined by judicial interpretation: (a) of its federal relations; (b) of its interstate relations.

[2] The instructor may profitably pursue the subject of State government into its details. The *Manual* (usually published by the State) supplies the data.

CHAPTER IV

THE UNITED STATES

1. The United States, "the more perfect Union" is "an indestructible Union of indestructible States." It is a public corporation, and its Constitution was "framed for ages to come."[1] Whether or not the Constitution of American Union was founded on the State governments as existing in 1787, it was founded on the same plan.[2] The representative principle is at the basis of the plan. Essentially, the difference between the application of the principle by the States and that by the United States lies in the relation of the two to the American people. The government of the United States is the government of the people of the United States,—that is, of the American people as a whole,—as a nation. The government of a State

[1] Marshall in Cohens *v.* Virginia, 6 Wheaton, 387–9 (1821).

[2] The origin and authorship of the Constitution are narrated at length in the author's *Constitutional History of the United States.*

or Commonwealth is that of a part of the American people,[1] as a local community. Thus the Constitution of the United States and all treaties made under its authority are "the Supreme law of the land."

2. The judges in every State are bound by the supreme law, "anything in the Constitution and laws of any State to the contrary notwithstanding."[2]

The Constitution of the United States works. To use a phrase of trade, "it is a going concern."

3. Experience proves the adaptability of the American system of government,—as exemplified by that of the United States,—to a continental domain. Experience alone can prove whether it is adapted to remote and outlying possessions. The real question is whether the principle, as principles on which federal government in America is based, are adapted generally to any race, people, climate in the world. The fundamental principle is that of representation. The American people are sovereign. They have ordained and established the Constitution of the

[1] Examined at length by Marshall in Marbury *v.* Madison, 1 Cranch, 137 (1803).

[2] Art. VI., 2.

United States, forming "the more perfect Union" for purposes set forth in the Preamble to that Constitution. Of these purposes the primary and most important is to establish justice. The principle applied here is that of representation.

4. The sovereign people are represented by their agents, chosen by themselves to perform certain specific functions. These functions are recognized and called legislative, executive, and judicial. Involved in these functions are the ministerial, or administrative functions, and generally speaking, these administrative functions are performed by persons who are appointed by legislative, executive, and judicial officials who are elected by the people. Thus all the authority possessed by the elected or the appointed official is delegated by the sovereign, —and this means a limited authority. Vast as is this authority thus delegated it is never sovereign.

5. A glance at these limitations makes this clear:

(1) The executive is limited in time, by his term of office, and specifically, further, by the legislative and the judiciary as set forth by the Constitution.

(2) The legislative is limited by the executive (*e.g.*, by the veto power) and by the judiciary (*e.g.*, its power to declare an act of Congress unconstitutional,—that is, null and void).

(3) The judiciary is limited by the legislative and the executive (*e.g.*, by laws defining the organization and jurisdiction of federal courts).

(4) Administrative officials are limited by laws which prescribe their duties, powers and procedure.[1] In other words, no federal official is,—as James II claimed for himself, "above the law." No person in America is above the law. Indeed, as the constitution of Massachusetts declares, the purpose of the American people is that theirs "shall be a government of laws, not of men."[2]

6. The most popular State paper known to

[1] The principle involved in limitations is well stated by Bryce: "The States are carefully safeguarded against aggression by the central government. So are individual citizens. Each organ of government, the executive, the legislature, the judiciary, is made a jealous observer and restrainer of the others. Since the people, being too numerous, cannot directly manage their affairs, but must commit them to agents, they have resolved to prevent abuses by trusting each agent as little as possible, and subjecting him to the oversight of other agents, who will harass and check him if he attempts to overstep his instructions." *The American Commonwealth*, Bryce, i., 298 (First Edition).

[2] Constitution 1780. Part I., xxx. This idea is repeatedly stated and applied by Chief-Justice Marshall in his judicial opinions.

man,—the Declaration of Independence,—utters the same principle, that "all men are created equal," which means, in governmental matters, that all persons are equal before the law; that justice is no respecter of persons.

All governments of antiquity were founded and administered on the theory that theirs should be a government of men, not of laws.

7. Yet the American system of government in thus making law supreme is not elevating an abstraction to primacy. "The law,"—said a distinguished American judge, "is common sense." Happily we have further light on this point. Said Lincoln: "Why should there not be, a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world?"[1]

8. Of course this confidence carries with it moral consequences. What if the people have perverted ideas of justice? Dr. Franklin seems to have had this thought in mind in his words to the Convention which framed the Constitution: "I agree to this Constitution with all its faults, if such there be; because I think a general government necessary for us, and there is no

[1] First Inaugural, March 4, 1861, *Works* (Century Edition), II., 5.

form of government but what may be a blessing to the people if well administered; and I believe further that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, *when the people shall become so corrupted as to need despotic government, being incapable of any other.*"[1] There is a very wise saying: "As with the people, so with the priest."[2] It may be said, as with the people of the United States, so with the government they establish; as with the people, so with the administration. Lincoln is optimistic. Franklin is apprehensive; the Bible is historical. Any American competent to form a conclusion may draw inferences as to the people and the Government of the United States. In these days when so much is said and done as to Americanization, any American is justified in applying in the right way Lincoln's thought expressed in his Gettysburgh Address, whether "any nation conceived in liberty and dedicated to the proposition that all men are created equal . . . can long endure."[3]

[1] Elliot, v., 554, September 17, 1787. (Italics mine.)
[2] Isaiah, 24: 2.
[3] November 19, 1863, *Works* (Century Edition), II., 439.

9. The profound truth, remarked by Lord Bryce, applies here: "to the people at last we come; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend."

10. That the stability of American Government and institutions depends upon the American people is a truism applicable to every aspect of government, federal and State.

11. The immediate affairs of life, in America, so far as affecting or affected by government look to the State rather than to the United States. In one form or another most of these affairs are by way of contract, the meaning and enforcement of which the State determines. Thus except by use of the mails, the great majority of the American people have no direct dealings with the federal Government. The mail service is a federal monopoly, warranted by the Constitution of the United States. So too is the coining of money, and by the term "coin" is meant any substance or article declared to be "money" by Congress.[1]

12. The mail service, the carriage like other

[1] Juillard *v.* Greenman, 110 U. S. 421 (1884).

monopolies by the federal Government warranted by the Constitution are an exercise of sovereignty, illustrated also by such acts as the purchase of the Louisiana country in 1803, or of Florida in 1819.[1]

13. We shall see, when we are considering "the citizen" how the United States has power to reach and, in a measure, to control, every person residing on American soil.[2] "The idea of a national government," remarks Madison, in the *Federalist*, "involves in it not only authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government."[3]

14. This means that the federal government *operates its powers* to the extent of reaching every person and everything within its jurisdiction. This extent of operation of its powers conforms perfectly with the language of the Constitution that it is "the supreme law of the land."

15. But in the exercise of this sovereignty only "objects of lawful government" can be thus affected. This seeming limitation brings

[1] American Insurance Company *v.* Canter, 1 Peters, 511 (1828). Decision by Marshall.

[2] *Ex parte* Siebold, 100 U. S. 371 (1879).

[3] No. xxxix.

us to the fundamental question: What are, or what are not "objects of lawful government"? No less an authority than the Supreme Court of the United States has answered this question. The Government of the United States is one of enumerated powers. It can exercise only those powers which are granted to it by the Constitution. "But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise as long as our system shall exist." The conflict here (if one arises) is likely to be between federal powers and State powers,—or, between either federal or State powers (as they may be assumed) and unlawful procedure. Ours is a government of laws. There are limitations on the *extent* of federal and of State power.

16. These limitations are set forth in Declarations, or Bills of Rights found in every American constitution of government. The first ten amendments of the federal Constitution comprise such a Declaration. Thus, "private property shall not be taken for public use without compensation"; no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, with-

out due process of law."[1] Supreme as is the Constitution of the United States, sovereign as are its people,—the federal Government cannot violate or ignore the fundamental rights of persons and property as laid down by this amendment. All this seems to establish the truth that there is a law higher than the Constitution of the United States as may be deduced from the Constitution itself. But the sovereign power in America recognizes the paramount authority of this law. Undoubtedly the recognition of this fundamental law in the American constitutions is, essentially, nothing less than the promulgation of the law by the American sovereign—the people of the United States.[2]

17. The Tenth Amendment to the Constitution tells the whole story: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Just what "powers" are thus "reserved," or "not delegated to the United States by the Constitution" are questions "respecting

[1] Article V.

[2] Chief-Justice Marshall examines "sovereignty" in McCulloch *v.* Maryland, 4 Wharton, 316 (1819).

the extent of the powers actually granted" which are "perpetually arising, and will probably continue to arise as long as our system exists."

18. But the American people have provided an agency for determining for all practical purposes, the extent of these powers,—viz., the Supreme Court of the United States. This is the final authority in America in all matters of law. Here we rest.

19. It will be observed that the essential question is "extent of power." This is the issue. The Executive, the Legislature has *power* to do foolish things, and the foolish thing may be sustained by the Supreme Court as constitutional, because President or Congress had the power, under the Constitution to do it. The *motives* of Executive or Legislature are not examinable in any court of law.

20. The actual working of the Government of the United States now for nearly a century and a half—however sharply that working may differ from theories about that Government expressed at its inauguration or since, can be learned,—if at all,—only by prolonged study of numberless details. Of course, the meaning of the Constitu-

tion and the laws is variable as the minds of their interpreters. This variation is the open door admitting political parties,—schools of political thought, and policies of administration. What Hamilton calls "the exigencies of the Union" afford opportunities endless in number, for differences of opinion as to the origin, the sources, the operation and the authority of the Government of the United States. Thus far, the American people have adhered strictly to the republican form of government. That is the form which the Government of the United States guarantees to every State. It is the fundamental, the essential form of government in America, in war, in peace, at all times and under all circumstances, the American people have adhered to that form. What that form actually is, to-day, is republican,—that is,—*representative*. It began a representative democracy and doubtless will so continue "for ages to come."[1]

[1] The structure, the "mechanics of government" (to use Madison's phrase), State or federal, may be learned, more or less incompletely, from books which enter into details of its organization. Such books are of encyclopædic value, and help make our governments, federal, State, city, county, as it were, visible; objective. The instructor may easily supply these details; the student may read them for himself. Among the treatises, on the subject, of highest value, is James T. Young's, *The New American Government and Its Work*, a textbook furnishing a wealth of details; so, too,

Charles A. Beard's *American Government and Politics*, and his accompanying volume, *Readings in American Government and Politics*. Simeon E. Baldwin's, *The American Judiciary* is a little classic on the subject; either of William Macdonald's well-known volumes, *Documentary Source Book of American History 1606–1898;* or *Select Documents Illustrative of the History of the United States 1776–1861*, supply illustrations of applied Principles of American Government; of course the Constitution of the United States is the primary authority for any utterance on American Government. Story's or Willoughby's *Commentaries*, or Cooley's *Principles of Constitutional Law*, the author's *Essentials of American Constitutional Law;* the *Federalist*, and Bryce's *American Commonwealth* may be read to advantage. Of course the instructor will be guided by circumstances. In the study of American Government, *Multum* not *Multa* is the test of values. Of great value is W. B. Munro's *The Government of the United States, National, State and Local.*

CHAPTER V

THE CITIZEN

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.[1]

Congress shall have power "to establish a uniform rule of naturalization.[2]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.[3]

2. Government in America concerns or affects three essential elements (as set forth by the Constitution of the United States): (1) The United States. (2) The States. (3) The Citizen. The comprehensive definition in the federal Constitution, made in 1870, includes men, women, and children.

3. All citizens have civil rights, but the several States only confer political privileges. This is the difference between civil and political

[1] Art. XIV. (1868). [2] Art I., 8: 4.
[3] Art. XV., 1 (1870). Art. XIX.

"rights," that political rights empower a person to participate in the public business,—that is, in shaping, controlling government itself. So long as a person lives he, or she, infant or adult, has civil rights. A person by his or her voluntary act may divest himself or herself of civil rights. By civil rights is meant the fundamental, so-called "natural" rights, as set forth in Bills of Rights and included in every American constitution of government. But political "rights" (really, privileges) are exclusively in control of the several States. Political "rights" are possessed by a person who complies with the laws on the subject in force in the State in which he resides. Thus the "right" to vote is usually granted by the State law to such persons as are resident citizens of the age of twenty-one; who are registered and who pay taxes; (not always required; in some States, payment of a poll tax). While citizens of each State are entitled to "all privileges and immunities of citizens in the several States,"—"privileges and immunities" do not include "the right to vote." Because a person is a voter in one State, he is not, when removing to another, thereby a voter in the State to which he has removed. Before he can vote in that

State, he must comply with its election laws. If he removes from one voting precinct to another, in a State, he must have complied with the election laws before he can vote in the precinct into which he has removed,—even if his removal be no more than across the street. A person is not compelled to vote, neither can he vote unless he complies strictly with the election laws of the State in which he would vote.

4. The citizen therefore may be considered as a person having political privileges.

5. The immense meaning of politics in America,—the very large privilege of participating in the government,—federal, State, local, emphasizes the citizen as a political being. The right to vote and to hold office is the most important right of the American citizen.

6. There are two citizenships,—that of the United States, that of the State. Primarily the idea of citizenship is of local residence. Wheresoever a person lives, there he is a citizen,—that is, he, while possessing civil rights,—is, if these rights are impaired, entitled to legal proceedings in that place (*i.e.*, within the jurisdiction in which that place lies). This practically means that he is entitled to his legal (civil rights) in any place

over which the United States has jurisdiction, or —if the place be within jurisdiction of a foreign power, he is entitled to such legal rights, and proceedings, as are recognized and agreed upon by treaty between the United States and that power.

7. The principle involved here is that of protection. A government exacts service from its citizens or subjects and protects them. The exercise of the "right to vote" is a form, instance of self-protection. When the Fifteenth Amendment was under discussion in Congress, its advocates emphasized the argument that unless the negro could vote, he could not protect himself. Doubtless this idea is at the bottom of the prevalent conviction in America that the ballot is the chief defense of the citizen. The idea underlies every principle of representative government.

8. There are some 55,000,000 voters in America of whom about one million more than half are males. The majority of votes cast at any election decides the election and authorizes a policy, procedure, or administration; possibly a law, or the repeal of one. The issues are numberless. However, "majority rule" is the domi-

nant American rule. What constitutes a majority is determined according to law.

9. The word "citizens" in America is often used as meaning the "people" of America. Strictly speaking, the people of America include all its inhabitants,—residents, native-born, naturalized, and aliens. "Voting citizens" exclude aliens,—the foreigner residing in America, and all persons who are incapable of voting because of failure or inability to comply with the election laws of a State. The number of citizens who actually vote is usually a minority of those qualified to vote if they but take the trouble to comply with the election laws of the State in which they reside. Thus it often happens, in America, that a person is elected to office, or a public policy is adopted by a vote of the majority of the minority of possible votes.

10. Lincoln's opinion on the admission of West Virginia into the Union expresses, doubtless, the conviction of the American people, in point:

> It is a universal practice, in popular elections, to give no legal consideration whatever to those who do not choose to vote, as against the effect of the votes of those who do choose to vote. Hence, it is not the qualified voters, but

the qualified voters who choose to vote that constitutes the political power of the State.[1]

The principle here is that of representation. The majority of voters who vote at any election represent all the people in the jurisdiction within which the election is held. Therefore the person or persons elected, the policy thus agreed upon at the polls, become the agents and the policy of all the people within the jurisdiction. The essential principle of "majority rule" is the fundamental principle of American government. The old maxim of law is here exemplified: "What we do by another, we do ourselves."[2]

[1] *Works*, II., 286 (Century Edition), December 31, 1862.

[2] The law of citizenship is examined in Chapter XII of the author's *Essentials of American Constitutional Law*. The instructor may profitably utilize the decisions of the Supreme Court of the United States, definitive of American citizenship in its various aspects, *e. g.*, Twining *v.* State of New Jersey, 211 U. S. 78 (1908); Slaughter-House Cases, 16 Wallace 35 (1872); U. S. *v.* Cruikshank, 92 U. S. 542 (1872); Civil Rights Cases, 109 U. S. 3 (1883); Hawaee *v.* Monkishi, 190 U. S. 197 (1903); Dorr *v.* U. S. 195 U. S. 138 (1904); U. S. *v.* Ju Toy, 198 U. S. 253 (1905). (The above bear on the essential elements of citizenship.) Hooe *v.* Jamieson, 166 U. S. 395 (1897); The Ohio and Mississippi R. R. Co. *v.* Wheeler, 1 Black 286 (1861); St. Louis and San Francisco R. R. Co. *v.* James, 161 U. S. 545 (1896); (these bear on cases of diverse citizenship). Paul *v.* Virginia, 8 Wallace 168 (1868); Blake *v.* McClung, 172 U. S. 239 (1898); (these relate to "the privileges and immunities of citizens"). Lascelles *v.* Georgia, 148 U. S. 537 (1893) (Extradition). Havenstein *v.* Lynhaven, 100 U. S. 483 (1879); (Aliens). U. S. *v.* Wong Kim Ark, 169 U. S. 649 (1898); Downes *v.* Bidwell, 182 U. S. 244 (1901). (XIX th

Amendment; Citizenship in the U. S.) These cases are given in McClain's *A Selection of Cases on Constitutional Law.* See also (Index, same volume), on "Aliens," "Birth by Citizenship," "Naturalization." See also under "Nationality" and "Naturalization" in A. S. Hershey's, *The Essentials of International Public Law.* The subject is also discussed in the other volumes cited in the Selected "Bibliography," in the present work.

Of great value is the *Federal Citizenship Textbook, a Course of Instruction for Use in the Public Schools by the Candidate for Citizenship.* Part III, by Raymond F. Crist, U. S. Department of Labor, Bureau of Naturalization, Washington, Government Printing Office, 1921, 104 pp.

CHAPTER VI

CITIES

1. Cities in America are political subdivisions of a State and therefore possess whatever organization, powers, and jurisdiction the State grants. These grants,—taking the form of charters, acts of incorporation, laws of whatever kind,—are strictly construed. No American city is free, sovereign, or independent.

2. A city is a part of a whole,—the State. Free cities, like the members of the Hanseatic League, or distinct urban communities, like Carthage, Rome, Athens, or Thebes of old, are unknown to American government. Doubtless civil government grew apace, if it did not originate in cities. Our words "politics" (*πολις*, a city), "citizen" disclose chapters of the history of government. Indeed, our words "civics," "civil," and others on the same root (*civitas*, the state) tell the same story. Early governments were governments of city-states.

3. In America, to-day, more than half the population dwells in cities, and the constant influx from the country tends to increase the urban proportion of our people. City government, therefore, in America, has become the government under which the greater part of our people live.

4. The Constitution of the United States was made for States,—not for cities, or territories, or "outlying possessions." Cities are therefore a part of State government. Territories and outlying possessions of the United States are subject to the exclusive control of Congress.[1]

5. Thus New York City is governed by the people of the State of New York acting through the constitution of that State. Practically, this means government of the city by the Legislature of the State.

6. Manila is governed by the people of the United States acting through the Constitution of the United States. Practically this means government of Manila by Congress.

7. When the first State constitutions and the Constitution of the United States were made, the urban population of the country was so small as

[1] Art. IV., Section 2. Downes *v.* Bidwell, 182 U. S. 244 (1901).

to be almost negligible,—less than three per cent of the entire population. By 1890 (a century later), the urban population approximated one fourth of the population, or more than eight times the number at the time the federal constitution was made. Since 1890, this population has more than doubled. The problem of city government in America is now, and henceforth will continue to be, as very large, if not the largest civil problem before our people.

8. The problem, stated in some of its bare outlines is how shall the most complex population, having diverse social structure, heterogeneous interests, unlimited possibilities of all kinds, extremes of poverty and wealth, unlimited needs as to public health, education, safety,—all involving taxation, expenditures,—questions of public works,—heating, lighting, transportation, —in brief, the large problem of government for congested populations,—be organized and administered?

9. The very conditions of city life test all the powers of government. All these urban conditions duly considered,—the one question is, "What government is best suited to the city?"

10. In seeking an answer to this question,

the main end and purpose of all government remains: to establish justice. But no two cities are precisely alike, though the dominant conditions of several cities may be quite the same. This presumption, which lies at the bottom of laws which classify cities within a State, proceeds on the theory that cities of equal population shall be governed alike. The basis of government here is *persons*, not things; population,—not wealth, area, race, language or occupation.

11. In the present stage of the development of ideas of government, we have but one unit of measure: *population*. Economic, ethical, racial conditions yield to numbers of persons as the basis for government. This means that justice can be best (possibly, in no other way) established than by basing government on population. The theory is that an equal population will have practical equality (if not identity) as to economics, ethics, manufactures, education, and other elements which, in the aggregate, dominate city life. In other words the only basis of government adopted for cities is the basis adopted for States and for the United States: population.

12. Given this basis, the question is, What population? That of the city itself or some

other,—*e.g.*, that of the entire State. If of the city itself, and not of the State as a whole, then the city shall have "self-determination," or "home-rule." This means that the people of the city shall in large measure be independent of the remaining people of the State, particularly in organizing the form of their government. While republican (*i.e.*, representative in form) it shall vary from the exact form of the State government. State governments, in America, are essentially of the (so-called) federal form,—*i.e.*, they consist of three departments,—the Executive, the Legislature, and the Judiciary. The State, the national executive is a single person; the State, the national Legislature is bi-cameral.

13. City government of the federal type,—familiar in this country, provides for a mayor, a select and a common council (a little Congress), and courts of law. But is the general law of the State,—which consists of sparsely settled regions (rural regions) and congested populations (cities),—sufficient to establish justice, the great end of all government? A fundamental and very practical question is here involved. Shall the people of a State be governed by general or by special laws? Special legislation is, generally speaking,

class legislation, favoring some particular interest. It therefore does not establish justice.

14. General legislation misses the needs of some communities. Thus the needs of a great city are different from those of a farming community. This difficulty in legislation was thought for many years to be overcome if cities were classified according to population.[1] But the multiplication of classes of cities amounted practically to special legislation. The impossibility of solving the problem by mere classification of cities soon was disclosed,—for so rapid was the increase in number of cities, and of their populations,—so various their several needs, the State Legislature was unable to meet these needs by appropriate legislation. This condition became serious in States in which great cities sprang up, incident to manufacturing, as in New York, Pennsylvania, Ohio, Illinois, and Missouri.

15. In 1875 Missouri inaugurated the "home-rule charter" system of city government, giving every city having a population over 100,000 the right to formulate, adopt, and administer its own

[1] Exemplified by the classification of Ohio cities into two classes by the Constitution of 1851;—Municipal Code of 1852; Act of 1868.

charter.[1] It is now nearly half a century since this innovation. Upwards of one hundred and seventy cities in more than a dozen States are to-day organized under some form of "home-rule." Varying as these forms do, they all agree in complying with the principle of representation fundamental in American government.

16. The chief argument in favor of "home-rule" for cities is the compliance of the form with the principle of representation. The people of the city,—so runs this argument,—know best their own needs. The State Legislature cannot, or does not, or will not know these needs so perfectly. The chief objection to the system is to its decentralizing tendency and effects,—that the people of the city make these interests paramount to those of the State, thus making the part even greater than the whole. Opponents of "home-rule" for cities assert that all essential interests of the city are essential interests of the State, and therefore should be considered in no wise different from general State interests. If the claims of "home-rule" (so its opponents assert) are fully acknowledged, then every community within the State will be an independent

[1] See Constitution of Missouri, 1875, Art. IX., Sec. 16.

community, and the State will be hopelessly split up into innumerable parts and factions.

17. In brief, opponents of the system see in "home-rule" for cities the disintegration of the State. The rejoinder for "home-rule" for cities is that the system cuts down and even eliminates gross abuses in government,—especially in the matter of taxation; in the efficiency of appropriations; in public order, health, elections, schools, methods of transportation,—indeed, in every branch and interest of city government.

18. The principal points of difference of opinion as to the system are:

1. *Taxation*

The power to tax is the power to destroy. The State should not delegate this power to any of its subdivisions.

2. *Police Power*

The police power of the State is an aspect, an element of its sovereignty. The first care of a State is for the welfare of its people: their health, safety, and morals. This police power should not be surrendered to any subdivisions of the State.

3. *Election Laws*

The election laws of a State should be uniform. No subdivision of a State should be allowed to make election laws differing from those enacted by the Legislature for the people of the State as a whole.

4. *Indebtedness*

No city should be allowed to exceed, in borrowing power, an amount, or percentage of valuation, fixed by the Legislature. Otherwise financial credit will vanish and bankruptcy be the fate of the community.

5. *Charities and Schools*

Education and philanthropy are the care (function) of the whole State and are never merely local interests. Uniformity in education is necessary, as it is just, for all the people of the State. Indeed, the weight of argument against "home-rule" for cities in a State rests on the justice and equity of uniformity for all communities within the State.

19. To these (and other) objections to the system there is essentially one reply: the in-

adequacy of general laws (general charters) to the special wants of a city. The answer recognizes that "home-rule" for a city makes it a political unit separate from the State. Yet this divorce of State and municipal politics is claimed by defenders of "home-rule" for cities as a distinct gain for the city, in that its people have the opportunity by its "home-rule" charter to free themselves from control by domination of a political party dominant in the State, and thus to control their own urban affairs. This separation of State and city issues, making the city independent of the State, it is claimed by supporters of the "home-rule" system operates to the advantage of the people of the city. Primarily, it concentrates their attention on their own urban interests, and results in greater efficiency in every branch of municipal government.

20. This all means,—if it means anything,—that "home-rule" for cities works out, as a system, more perfectly than any other known, the fundamental principle of American government, —representation.

21. In cities which have "home-rule" it is claimed that: (1) The voters,—the electorate, take a livelier interest in all public questions

affecting the city's welfare; as proved by the larger percentage of persons voting than in cities not having "home rule."

The voters inform themselves as to these questions, whence a marked discrimination in choosing public officials.

(2) That the "best men,"—the best qualified candidates are chosen to office irrespective of party affiliation.

(3) That economy and efficiency mark every department of city government,—notably in education, public safety, public health, parks, streets, public works (water, gas, light), urban traffic and transportation,—in brief, in all expenditures of money. Such economy and efficiency bring reduction in taxes, and "clean politics."

22. All this means (if true) that "home-rule" for American cities is a more complete application of the representative principle in government than has hitherto been known. If more than one half the population of the United States dwells in cities, then the significance of "home-rule" for them in America is apparent.

23. Authority to the people of a city to have "home-rule" comes from all the people of the

State through their representatives, the State Legislature. By this authority, the people of the city at an election, or town meeting appoint a committee to draw up a plan for the city's government, usually called a charter. This charter is submitted to the electors in the city (a referendum) and, if approved by a majority of them, becomes law. This charter may have been prepared by a special committee; by a non-resident; may be copied from some other city. Whatever the origin, it becomes the city's charter by majority vote of its electors.

The charter thus adopted has for its primary purpose the establishing of justice. This end is usually expressed as the securing of economy and efficiency.

24. To this end, the administration of city affairs is committed to individuals who by the charter are responsible for results in their respective departments. The organization and procedure is like that of a business concern. The city is considered as a business to be conducted by experts. The commissioners elected on a non-partisan ballot may divide the work among themselves, or employ a general manager who shall be responsible for economy and efficiency

in every department. The manager may be paid a salary. Usually the public business is divided among the commissioners,—thus one commissioner has charge of Public Safety; another of Streets and Highways; another of Public Health. The schools are usually left in charge of a School Board as organized and empowered by the school laws of the State. As in the government of American cities, there has been waste and inefficiency in departments whose work involves large contracts,—it is particularly in these departments that "home-rule" and "charters" seek to effect results.

25. Whatever form of commission government be adopted by a city,—that form is an application of the principle of representation. The primary authority is the people of the State. This means that a commission government, whatever its form, is a form of government authorized by the sovereign power in the State. The authority thus authorized is delegated by that sovereign. Like all grants or charters authorized by a Legislature (or, indeed by any power,—as the Executive, or the Judiciary) the city charter is strictly construed. In case of litigation arising under it, the court or courts of law

having jurisdiction interpret its meaning. The principle here is set forth by the Supreme Court of the United States: "It is emphatically the province and duty of the judicial department to say what the law is."[1] The charter, or commission form of government is the law of the city having "home-rule."

26. Therefore, whether the law of the city be its special charter, or the general municipal law of the State, the people of the city live under the "republican (representative) form" which characterizes American government, State and federal.[2]

[1] Marshall in Marbury *v.* Madison, 1 Cranch 137 (1803).

[2] The literature on the government of cities is very extensive and detailed. W. B. Munro's *The Government of American Cities* describes "the machinery of that government." Quite all available material worth citing is utilized, and cited. Instructors and students will find in this work adequate discussion of all the essential elements of city government. For comparative study, consult the same author's *The Government of European Cities.* See also H. Deming's *Government of American Cities.*

CHAPTER VII

THE SUPREME LAW
(Written and Unwritten)

1. The supreme law of the land is the Constitution of the United States and all acts of Congress in force, made by its authority.[1] No other people has a like law. Ours is written. There is also an unwritten supreme law, consisting of customary law, and (for lack or a better term) public opinion.

2. The Supreme Law has for its primary purpose the establishing of justice.[2] This established, all the remaining purposes of government follow: to insure domestic tranquillity; to provide for the common defense; to promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity.[3] No similar statement of the purpose of government can be found before the Constitution of the United States was made. This Constitution was

[1] Article VI., 1. [2] Preamble. [3] *Id.*

ordained and established by the people of the United States.

3. Probably no words are more commonly used, in America, whenever its laws or its government is considered, than "constitution" and "constitutional." No other people uses these words in like manner.

4. The Constitution is a short document (less than 6500 words)[1] and has now, for more than a century, been a model whenever a people have made any modification of their old government or organized a new one.

5. The Constitution is a delegation of powers. The delegating authority is the people of the United States.[2] The people by the Constitution not only delegate powers but also determine by what method or procedure these delegated powers shall be exercised.

6. The Supreme Law thus expresses the will of the people as to the powers which shall or may be exercised and also in what manner or method their agents shall exercise them. Thus the Constitution consists of statements of power delegated, and of parliamentary procedure.

[1] The last constitution of Louisiana, the ninth (1921), has more than 50,000 words. [2] Preamble.

7. Government is control. Control is reasonable,—that is, according to law. What is law? It is not self-executory. Therefore the idea or concept of government involves the making of the law; the interpretation of the law, and its execution. It also involves its administration.

Our Supreme Law is, historically, a piece of eighteenth century work, modified and amended later, to meet the exigencies of the American people.[1]

8. In so far as legislative powers have been granted by the people of the United States, they are vested in a Congress which consists of a Senate and a House of Representatives.[2]

9. The Constitution prescribes the composition of the Senate and of the House: how members of each shall be chosen; their respective qualifications as to age and residence; the term of office, and the method of removal from office. Also distinctive powers of each branch of Congress.[3] It prescribes the organization of each branch and the procedure in legislation.

10. Legislation is the act of the Congress,—

[1] See discussion of this point in the author's *Constitutional History of the United States.*

[2] Art. I., 1. [3] Art. I.

not of one branch of it,—unless so specified,—as in the making of treaties,[1] in which the Senate alone participates.

11. The powers of the Congress are stated, somewhat specifically, but with the somewhat sweeping grant of power to make all laws which shall be necessary and proper for carrying its powers into execution, and all other powers vested by the Constitution in the Government of the United States or any department of this government.[2]

12. This seemingly sweeping delegation of powers to Congress by the people is limited by explicit words at the opening of the legislative article which says, "All legislative powers herein granted shall be vested in a Congress," and again, in the Tenth Amendment, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people." The words "herein granted" and "are reserved" are words of limitation. This means that the Congress is not sovereign.

5. Having authorized the Congress to make

[1] It may be questioned whether "treaty-making" is "legislation."
[2] Art. I., 8: 18.

all laws necessary and proper to carry into execution the powers vested in that body, the people delegated executive power, vesting it in a President of the United States, specifying the method of his election; his term of office; some of his powers; his qualifications as to age and residence, requiring him, under oath or affirmation solemnly to promise faithfully to execute the office to which he is chosen. The people further prescribed the procedure of impeachment of the President.[1]

14. The supreme duty of the President is to execute the office he holds, which duty consists in his preserving, protecting, and defending, to the best of his ability, the Constitution of the United States.

15. To the end that justice be established, the exact meaning of laws must be known. This meaning affects the people, collectively and individually. They therefore delegated judicial power, vesting it "in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."[2] No authority has been given by the people of the United States by which judicial power is vested

[1] Art. II. [2] Art. III.

in courts of a State save and except that the judges in every State shall be bound by the Constitution of the United States, anything in the constitution or laws of any State to the contrary notwithstanding: a provision which vests State judges with power to interpret the Supreme Law of the land.

16. In vesting the judicial power of the United States in one Supreme Court and in inferior courts that vesting is not elaborated into details. The nature of cases or "causes" (to use a legal term) and the parties to them are described and a distinction made between the original and the appellate jurisdiction of the Supreme Court. The place of criminal trials, their procedure, and provision for change of venue are provided for. An amendment forbids the judicial power of the United States to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. This amendment adopted nine years after the inauguration of the constitution was made in recognition of the sovereignty of a State.

17. Chief-Justice Marshall declared the prin-

ciple that "it is emphatically the province and duty of the judicial department to say what the law is." This principle applies to any court of law. And he says further:

> If a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide the case conformably to the law disregarding the Constitution, or conformably to the Constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.[1]

18. The Constitution is ordained and established by the people of the United States as "the supreme law of the land." The conclusion is obvious: every law made in America in harmony with the Constitution stands; any other legislation falls.

19. But the Supreme Law of the land is concerned with other interests than the congressional, the presidential, and the judicial. Or, doubtless the truth may be stated in other words, as that the Constitution concerns the United States, the States severally, and the citizen. The people of the United States, modeling their Constitution on those of the existing States,[2] set

[1] Marbury *v.* Madison, 1 Cranch 137 (1803).

[2] Also utilizing ideas (provisions) in the Articles of Confederation,

forth the relations of the States to the United States; the rights, privileges, and immunities of citizens, and the coördination of the federal, Legislative, Executive, and Judiciary. An examination of the Constitution reveals in every article this fine coördination of parts,—this unity in government. By this Supreme Law the people of the United States ordained and established a national act,—providing for "an indestructible Union of indestructible States."[1]

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in early Charters and in English laws and judicial proceedings. See the Chapter on "The Sources and Authorship of the Constitution," in the author's *Constitutional History of the United States.*

[1] The Constitution is the subject of many histories, treatises, commentaries, and judicial decisions.

George Bancroft, *History of the Formation of the Constitution of the United States of America.* 2 vols.

George Ticknor Curtis, *Constitutional History of the United States.* 2 vols.

Francis N. Thorpe, *Constitutional History of the United States.* 3 vols.

Joseph Story, *Commentaries on the Constitution of the United States.* 2 vols.

W. W. Willoughby, *The Constitutional Law of the United States.* 2 vols.

Thomas M. Cooley, *Principles of Constitutional Law.*

Cooley, *Constitutional Limitations.*

Francis N. Thorpe, *Essentials of American Constitutional Law.*

Hamilton, Madison, Jay, the *Federalist* (Ford, or Lodge Edition).

James Bryce, *The American Commonwealth.* 2 vols.

Bibliography of the Constitution, by Paul Leicester Ford.

Facsimile of the Constitution in H. L. Carson's *History of the Celebration of the One Hundredth Anniversary of the Promulgation of the Constitution of the United States.* Vol. I.

Decisions of the American Courts on the meaning of the Constitution are the decisions in cases involving the Constitution an Act of Congress, or a treaty of the United States. No entire collcction of such decisions exists. See J. P. Cotton's (Editor) *Constitutional Dccisions of John Marshall*, 2 vols., and the *Reports of the Supreme Court of the United States* (later than Marshall's decisions). Recent decisions of this Court, in cases involving the Constitution are discussed by T. R. Powell, in *The American Political Science Review.*

CHAPTER VIII

THE LEGISLATIVE
(State and Federal)

1. The American people have vested the power to make their laws in the Congress and in the State Legislatures of which at present there are forty-eight. These forty-nine Legislatures are agents of the people: the Congress, of all the people of the United States; the State Legislatures, of the people subdivided into States. All these Legislatures have much in common. Each consists of two branches, or Houses,—an Upper and a Lower,—a Senate and a House of Representatives,—the Senate, the less numerous body. The House, or lower branch consists of representatives of the people elected in small districts; the Senate, of representatives elected in larger; in the case of the Congress,—these larger districts are States; in the case of the State Legislatures, these larger districts are of one or more counties.

2. Thus for the election of members of State Legislatures and that of the lower branch of Congress, the country is divided into districts,—as (in a State), Senatorial Districts, Assembly (*i. e.*, H. R.) Districts, Congressional Districts. State Districts (Senatorial and Assembly) are defined by the State constitution, or by act of the State Legislature,—usually by the latter,—as representative (Senators, Assemblymen) are apportioned to population, and this changes. Despite possible changes,—which in theory at least may best be considered from time to time by the Legislature itself, rather than be ignored as by an inflexible constitution, the supreme State law,—(the State constitution) may provide (as does Mississippi by its constitution of 1890) that the number of Senators and that of representatives shall be fixed,—that certain counties, (naming them) shall elect a number of Senators and Representatives; that the apportionment (districting of the State) shall be made by the Legislature every ten years,—that new counties may be created, but that the State shall be divided into areas, permanently and within each area the number of Senators and of Representatives shall be fixed.

3. Mississippi is thus divided into three parts,—the number of its Representatives never to be less than one hundred nor more than one hundred and thirty-three; that of its Senators, never less than thirty nor more than forty-five. The people of the State of New York, by their constitution of 1894 vest their legislative power in a Senate and Assembly; the Senate consisting of fifty Senators,—the Assembly of one hundred and fifty Representatives. The constitution districts the State for both Senate and Assembly. Provision is made for additional Senators. But on and after 1895, decennially, the Legislature districts the State. Theoretically,[1] the number of senatorial districts is obtained by dividing the whole number of inhabitants of the State, excluding aliens, by fifty; the number of Assembly districts, by dividing that number by 150; but county and town (*i.e.*, township) lines are to be respected; nor are city blocks to be divided.

4. The problem of representation is very different in a State like Mississippi, the majority of whose population is rural, from that in a State like New York, the majority of whose population

[1] Provision is made for creation of new counties; for additional Senators in special cases. See Art. III., 4.

is urban. In New York nearly one half the population resides in one city, New York. Shall the city govern the State, or the State, the city?

5. The problem of districting a State for Congressmen, or State Senators and Representatives is always difficult and (it may be said) has never been perfectly solved. Districting is never more than an approximation to a solution of the problem. When the time for legislative districting comes, the political party controlling the vote of the Legislature may and often does, district the State in its own interest,[1] so apportioning representation that the electors will return representatives of their own party,—even though in the aggregate, an honest vote would return persons of another party. This kind of districting,—known in America as "Gerrymandering," —the people of the State seek to prevent by provisions in its constitution prescribing that election districts shall consist of "compact and contiguous territory,"—that county and township boundary lines shall be respected, and that (as is the principle in Mississippi) specified subdivisions, or areas, of the State, shall never have more or less than fixed numbers of Representatives.

[1] As in Wisconsin, 1891.

6. In States having large cities,—New York, Illinois, Pennsylvania, Ohio, Missouri, and others,—the people of the State, by its constitution, attempt to prevent domination by cities by so apportioning representation.

7. It will be observed, here, that the fundamental principle of American government is involved. Ours is a representative democracy,—a republican form of government,—guaranteed by the United States to each State, and ever sought by the people of each State. Primarily it is thus sought in the districting of the State for legislative purposes.[1]

8. The equity of apportionment is supposed to be realized when equal numbers of people are thus grouped. In actual government such an apportionment is never realized. For instance, each State has equal suffrage (representation) in the Senate of the United States,—an equality of *public corporations; pares inter*

[1] The plan of districting a State is always set forth by its constitution; special study may be made of the State constitution of the State in which the student resides. Consult, *American Charters, Constitutions and Organic Laws* in which all State constitutions down to 1909 are given. "The equal vote allowed each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty." The *Federalist*, No. LXII. (Hamilton or Madison; Lodge Edition).

pares,[1]—not of population, areas, wealth, industry, or natural resources.

9. In States in which each county is a senatorial district, there is, in many respects, a similarity to the representation of a State in the Congress,—as for many purposes, a county is a public corporation, and the counties of a State are *pares inter pares*. So too, one Assembly District equals another, each having one vote in the Legislature, but an Assembly District may or may not be a public corporation; and rarely, if ever, are the wealth, resources, industry, natural resources of two Assembly Districts equal.

10. The basis of representation, in American government, is *persons*. Yet, in the administration of government, we shall see, if we consider taxation and commerce, the burden of support, while falling primarily on persons (as in time of war), falls on wealth, industry, and resources.

11. Apparently, then, representation apportioned to population is considered as the most equitable basis of government, irrespective of wealth, industries, natural resources, land areas, or other elements.

[1] One equal to another; literally, "equals among equals."

Persons are the basis of American government. Legislatures represent persons, not things.[1]

12. Members of the Legislature are chosen as agents of the people to make laws. Hence activities foreign to the duty of lawmaker are forbidden him. He is a lawmaker only while serving his term. Hence the limitation expires when he ceases to be a lawmaker. He so ceases by expiration of his term; by resignation; by expulsion from Senate or House by its action; (and usually) by removal from the District in which he was elected,—thereby ceasing to be its representative.

13. State constitutions and laws provide against a person's holding more than one office at a time, usually by declaring what offices are incompatible. The inhibition is not because a person may not at the same time represent the people in several functions;—say legislative, judicial, and administrative, but that he cannot so represent them without confusing one function with another,—or neglecting one to the neglect of the people's interests. The principle

[1] This fundamental distinguishes the growth of government and ideas about government in all ages. Aristotle's, "Man by nature is a political being," may be compared with Jefferson's, "All men are created equal," and Louis XIV's, "I am the State."

here involved is set forth in the Constitution of Massachusetts:

In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.[1]

14. In the first State governments, prior to the making of the national Constitution (1787), the legislatures were not limited. Limitations were placed on governors. The people delegated to their agents in State Legislatures power to make laws. This delegated power was abused. After half a century of experience in government, the people began curtailing the power of their State legislators by forbidding special legislation. The principle sought to be applied was that of general,—that is, equitable legislation. All laws made by State legislators should be of general application throughout the State, affecting all its people alike. The purpose of a law should be clearly stated in its title.[2]

[1] 1780, Pr. I., Art I., XXX.

[2] An illustration: in 1808, Aaron Burr, and others, secured passage of a law authorizing a company in New York City to establish waterworks, "and for other purposes." The company organized a bank.

15. Turning to the State constitutions in force to-day, elaborate and specific provisions will be found forbidding special legislation. This does not signify that special acts should not be performed,—*e.g.*, changing the name of a street, —but that, in the opinion of the people, that kind of an act should not be done by the Legislature. It is quite possible that a State Legislature has power to enact a law providing that all streets in the State running north and south shall be numbered, but the Legislature of Pennsylvania is forbidden by its constitution to regulate by "any local or special law" "the affairs of counties, cities, townships, wards, boroughs or school districts."[1]

16. The obvious reason for prohibiting special legislation is that the result desired,—if desired at all,—may best be secured through some other agency than the Legislature. It means that the local government can best attend to strictly local affairs, and that when a Legislature meddles with such affairs, it discriminates,—and discrimination in legislation, is, in theory at least, always inequitable. The principle here is: "the

[1] 1873, Art. III., Sec. 7. Similar provisions in other State constitutions.

whole shall legislate for the whole"; or, to use Chief-Justice Marshall's repeated truism,—"the whole is greater than the part."[1]

17. Another illustration of forbidden special legislation is as to the granting of divorces. The evil of such legislative grants becomes intolerable. The granting of divorces rests justly with courts of law which (in the language of Webster) "hear before they condemn; proceed upon inquiry, and render judgment only after trial."[2]

18. The long, and increasing list of subjects concerning which State Legislatures are forbidden to pass laws marks the growth of strictly local government, and the increasing knowledge among the people of the best method, or agency, by which, or through which to establish justice. A court of law, not a legislature, is an agency best representative of the will of the people to establish justice in divorce cases. This does not mean that a court of law always equals the will of the people. Representation is always an approxima-

[1] This axiom Marshall makes fundamental in his constitutional decisions. It is brought out repeatedly in Beveridge's *Life of Marshall.* See also the author's "Hamilton's Ideas in Marshall's Decisions," *Boston University Law Review,* April, 1921.

[2] In the Dartmouth College Case, 1819.

tion. The agent is not the principal, though he may, possibly, fully represent his principal.

19. American government, in its every aspect, is a device designed to establish justice. Every human institution is imperfect. Does the republican form of government more completely establish justice than any other form? This question brings into comparison all forms of government among men. It will be observed that the people of the United States,—and the people of the several States are included,—ordained and established "a more perfect" not a perfect, or most perfect Union. The attempt, the fact, is significant.

20. In vesting the law-making power in a legislature, the people, whether of the United States, or of a State, provide for the election of the lawmaker. The responsibility rests primarily with the people who elect. To what extent the lawmaker must comply with the ideas of the people who elect him is by no means agreed upon.[1] Shall a member of Congress, or of the State Legislature resign, if he cannot support, in

[1] Thomas H. Benton, as an anti-slavery man, did not represent the ideas of his constituents of Missouri in 1850; nor John B. Henderson, 1867–69, in his introduction and defense of the Fifteenth Amendment.

legislation, the ideas of the people (State or District) who elected him? Shall the judge on the bench decide according to popular ideas of the issue before him, or is he to decide as an expert, elected by the people as a person whose judgment shall be accepted as authoritative?

21. It is a remark of Webster's that

> the true principle of a free and popular government would seem to be, so as to construct it as to give to all, or at least to a very great majority, an interest in its preservation; to found it, as other things are founded, on men's interests.[1]

Another remark of Webster's is that, "the people must be protected against themselves." This raises a primary question whether the ideas of the people may ever be wrong. Or, expressed in another form, Do the people, when electing their agent, be that person lawmaker, executive, judge or ministerial agent (an administrative official by direct or indirect election), empower that agent to act for them as he judges best, thus, as it were, making him, during his official life, a quasi-sovereign, standing, as it were, "in their shoes"?

[1] Remarks in the Massachusetts Convention of 1820–21, *Journal*, 311 (December 15, 1820). The same thought is expressed by Hamilton, in the *Federalist*, No. XVI. (Lodge Edition, 95.)

22. The question is debatable.[1] It reduces itself to this: Shall the dominant opinion of the people at any time regulate and control the thought and action of the agents of the people,—members of the Congress and of the State Legislatures; the President; governors; judges, State and federal,—and administrative officials? If not,—when shall public opinion (national or State, or District) be ignored by the agent of the people?

23. Legislation, whether by the Congress, or by a State Legislature, is supposed to be required by the exigencies of the nation or of the State. All legislation in America is made by the majority in the legislature, and that majority usually represents the will of a political party. The people elect their agent by majority vote. Usually he is a partisan. Practical application of the principle of representation means therefore supremacy of a political party. Non-partisan legislation is,—at least in America,—ideal legislation. It is sometimes enacted even when a political party is dominant in a legislature.

[1] This question involves that of the initiative, the referendum, and the recall. On this subject consult Beard and Schultz, *Documents on the State-Wide Initiative, Referendum and Recall;* also Barnett, *The Operation of the Initiative, Referendum and Recall in Oregon.*

14. But what of the defeated minority? Should it be officially represented? The principle here involved is thus discussed in the *Federalist*[1]:

It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be (is) exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken up into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security of civil rights must be the same as that for religious rights. It

[1] No. LI. (Hamilton or Madison).

consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government.

and again[1]:

25. To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to that of the less. . . . The public business must in some way, or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national[2] proceedings.

In America majority rule is prevalent; minority representation, exceptional.

26. Hamilton devotes one number of the *Federalist*[3] to a discussion of the question whether different classes of the people should be represented "by persons of each class," *i.e.*, merchants by merchants; mechanics by mechanics; the learned professions by lawyers, doctors,

[1] *Federalist*, No. XXII. (Hamilton).
[2] Also state or local proceedings.
[3] No. XXXV.

clergymen; the landed interest by landowners,—and he pronounces the idea "altogether visionary." His answer is that "a man who is a candidate for the favor of the people, and who is dependent on the suffrages of his fellow-citizens for the continuance of his public honors (will) take care to inform himself of their dispositions and machinations and (will) be willing to allow them their proper degree of influence upon his conduct." "This dependence and the necessity of being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they are the strong chords of sympathy between the representative and the constituent."

27. Another form of minority representation is proportional representation.[1] Whatever method be followed, the purpose is to secure the ends sought by representation. Thus far, in America, representation of the majority has been considered equitable, in quite all instances.[2]

[1] Examined at length by Thomas Hart, *The Election of Representatives*, and by J. S. Mill, *Representative Government*. Consult also the article on "Representation," *Encyclopædia Britannica*, 11th Edition, XXIII., 108–116.

[2] There is nothing in the Constitution of the United States that forbids minority or any form of proportional representation. The mere *method*, or *procedure* of securing representation is not there fixed. For an application of the principle of representation by other than "majority rule" see Constitution of Ohio, Art. XI., §§ 2, 3, 4; Illinois,

28. Against minority representation, in any form, objection, elaborated in argument, is made that only majority representation can fix responsibility in legislation.

29. As the essential purpose in legislation is to establish justice, and as representation is the basis of American government, the conclusion is inevitable that only complete representation can establish justice. In theory, the sovereign can do no wrong,—*i.e.*, no unlawful act. In America the people are sovereign. To lawmakers they delegate powers of legislation. Legislatures,—the Congress, the State Legislatures, are agents elected by the people for a particular purpose. Ours is "a government of laws, not of men."[1] Of vast practical impor-

1870, Art. IV., §§ 7, 8; minority representation as to election of numbers of the lower branch (H. R.) of the State Legislature; Pennsylvania, 1873, Art. XIV., § 7 (minority rule applied in the election of county auditors and county commissioners). See F. D. Bramhall, *The History of Cumulative Voting and Minority Representation in Illinois, 1870–1919.*

[1] Aside from long personal experience in legislation, or adequate study of the subject, knowledge of it is likely to be scanty and unreliable.

The American constitutions are the source of information, and instructor and student are directed to these as of primary significance. The constitution of any State (preferably one's own) may be made the basis for comparison. The Article in a State constitution entitled "The Legislature" (or equivalent) is usually the longest and the most detailed. Provisions affecting legislators and legislation, and

tance, in legislation, is the appropriation of public money. The procedure involves the whole question of the "Budget." This *estimate* may be made by the Executive only (with aid of Heads of Departments), by the Legislative (Committees) only; or by conjunction of both. Should it be mandatory?

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especially, *representation*, will also be found in other Articles. For a discussion of two important *powers* of legislatures, see the Chapters on "Taxation" and "Commerce." An excellent work is *American Legislatures and Legislation*, by Paul R. Reinsch.

CHAPTER IX

THE EXECUTIVE

1. The people of the United States vest executive power in a President; the people of a State, in a Governor. The President is elected by special electors; called presidential electors who are elected by the people. The Constitution of the United States provides "that each State shall appoint in such manner as the Legislature thereof may direct a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."[1] Further provision is made by the Constitution for the election of the President by these electors; also for his election in case these electors fail.

2. In case of their failure to elect a President the election devolves on the House of Representatives to choose him, each State having one vote.[2]

[1] Art. II., 2.

[2] See original provision, Art. II., 3, and Amendment XII. (1804).

3. Governors are chosen by direct vote of the people of a State. It will be observed that the federal Constitution leaves the method of securing presidential electors (known popularly in the aggregate as the Electoral College) to the respective State Legislatures,—a statutory proceeding, and a recognition (as in case of a disputed election, when the House elects) of the portion of sovereignty remaining in the States,—analogous to the recognition of that portion implied by the equal vote allowed each State in the Senate of the United States.

4. Both the national Constitution and that of each State prescribes qualifications of its executive as to citizenshp and residence; the federal Constitution also (as some State constitutions) that of age. The federal also prescribes nativity.[1]

5. These constitutions provide also for election of a Vice-Executive,—the Vice-President, the Lieutenant-Governor, qualified as the chief-

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South Carolina was the last State "to appoint" presidential electors (1860); in all States they are elected by direct vote of the people, and generally as State-wide candidates; not by districts.

[1] Though nativity is not usually required of governors by the written constitution of a State, persons, not native-born are rarely chosen governors.

executive, and made President of the Senate (federal or State) whenever he chooses to execute the office. In case of the death, resignation, or inability of the Chief-Executive to perform the duties of his office they fall upon the Vice-Executive.

6. In case of the death, resignation, or inability of both Chief-Executive and Vice-Executive, the succession in execution of the executive office is according to the law.[1]

7. Thus in the vesting of executive powers by the people the principle of representation obtains. The executive possesses delegated powers. These powers are limited in *time*, by the term of his office, and are limited in *kind* by specific provisions, chief of which are as to executive use of the *pardoning* power and of the *appointing* power.

8. There is a theory of government that it emanates originally from the executive,—say as chief, as leader, as the strong man. So Carlyle's remark on the word "king," as derived from *koenig*, *koennen*, the man who *can*. Whatever

[1] That is by statute: Act of Assembly or of the Congress, as the case may be. The act is known as the presidential, or the gubernatorial succession law.

theory of the origin of government may be advanced, the evidence of history supports the view that the king (or whoever dominated public affairs) granted *privileges* (*e.g.*, as Queen Elizabeth and other sovereigns granted charters), and privileges are asserted by their holders as rights. Or,—another view,—the people compelled grants and privileges which are denominated "natural rights"—as set forth in the Declaration of Independence.

9. Whatever theory may be held of the origin of government among men, all agree that the republican form means elimination, more or less, of the monarchical or absolute form. The pardoning and the appointing power of the executive are his principal powers. His so-called participation in legislation,—by approval or disapproval of bills is (as Hamilton might say) "a constitutional recognition of the portion of sovereignty remaining" in the executive,—a portion, in the concept of representative government, delegated to him by the true sovereign, the people. Fundamentally, in the American system of government, all the powers of the executive are delegated powers. Limitations of his powers mean no more than that the sovereign has not

delegated some powers to him, or, to use constitutional language, they "are reserved to the States respectively, or to the people."[1]

10. The pardoning, the appointing, and all other powers vested in the Executive, federal or State, are evidences of their respective jurisdictions. Thus the President makes treaties "provided two thirds of the Senators present concur"; "no State shall enter into any treaty, alliance, or Confederation,"—hence no Governor can make a treaty. This limitation may be understood as incident to the respective jurisdictions of the two executives. A jurisdiction may be described as a domain within which power is exercised,—or a function, capacity, or office of judging or governing. The American people have established two jurisdictions,—one, of the United States, the other, of the several States. These jurisdictions are subdivided, for purposes of establishing justice.[2]

[1] An examination of the federal Constitution, and of any State constitution, reveals the limitations on the Executive. See *Charters and Constitutions.*

[2] In the United States and in the States the subdivisions are executive, legislative, judicial, and administrative. The subdivisions are innumerable,—such as the authority of minor officials. For an account of some of these divisions and subdivisions see *The American State Series,*—e. g., *The American Executive and Executive Methods,* by J. H. Finley; *Local Government in Counties, Towns and Villages,* by

11. The essential function or duty of an executive is "faithfully to execute the office,"—as is stated in the oath taken by the President or the Governor before he enters upon the execution of his office. An illustration in point is Lincoln's statement to Horace Greeley, in his letter of August 22, 1862: "My paramount object . . . is to save the Union." This is the solemn meaning of the presidential oath,—the full significance of the President's sworn promise, "faithfully to the best of my ability (to) preserve, protect, and defend the Constitution of the United States." And what is the Constitution? "The Supreme Law of the land." Who ordained and established this law? "The people of the United States."

12. For what purpose? "To establish justice." Thus the American people vest executive power in a President of the United States, and the people of the several States vest executive power in a Governor, for one fundamental purpose: "to establish justice."

J. A. Fairlie; *Territories and Colonies*, by W. F. Willoughby. The *Federalist* discusses "jurisdiction," *passim*. So too James Bryce, in his *American Commonwealth*. The word "jurisdiction" is commonly used with reference to the authority of a court of law; it may properly be used with reference to that of a legislature, or an executive.

13. Every Governor, before entering upon the duties of his office, takes oath (or makes affirmation), faithfully to the best of his ability, to preserve, protect, and defend the constitution of his State and of the United States. All laws are made by authority of the Constitution.[1]

14. The whole duty of the Executive,—national or State (or subdivision of a State, as a city), is to execute the laws. Simple as this statement may seem it means an immense responsibility. Failure to execute the laws,—which means "to preserve, protect, and defend the constitution" constitutes a misdemeanor, or a crime (the federal Constitution mentions treason and bribery),[2] on conviction for which, the executive shall be removed. The procedure by impeachment is prescribed.[3] The impeachment is the accusation; the conviction is the judgment resulting in removal from office. President Johnson was impeached but not convicted; a Governor of New York was both impeached

[1] The federal Constitution is part of every State constitution; State laws comply with State constitutions, and both with the "Supreme Law of the land," Art. VI., 2. It is the custom in all States for officials of whatever rank, to swear allegiance to the United States, before entering upon the duties of their office.

[2] Art. II., 4.

[3] Both in the federal Constitution and in that of a State.

and convicted. The entire procedure is political.[1]

15. The American Executive is an elected official, vested with power by the people. He is not a sovereign; he is an agent of the sovereign, the people. In every respect, his office conforms to the fundamental idea in American government,—the principle of representation.[2]

[1] See D. M. DeWitt's *The Impeachment and Trial of Andrew Johnson,* also W. A. Dunning's, *Essays on the Civil War and Reconstruction.*

[2] The power of a President of the United States, so President Hayes is reported as remarking, has "never been realized, and the practical use of power, even by an ordinarily strong President was (is) greater than the books ever described. . . . The executive power is large because not defined by the Constitution. The real test has never come, because the presidents have, down to the present, been conservative, or what might be called conscientious men, and have kept within limited range. And there is an unwritten law of usage that has come to regulate an average administration. But if a Napoleon ever became President, he could make the executive almost what he wished to make it."

C. E. Stevens, *Sources of the Constitution of the United States,* 169 n. This remark by President Hayes may be compared with Hamilton's characterization of the national Executive in the *Federalist,* No. LXIX.

CHAPTER X

THE JUDICIARY

1. The people of the United States vest judicial power in one Supreme Court and in such inferior courts as Congress may from time to time establish[1]; the people of the several States vest the judicial authority of the State in like manner, by the several State constitutions. In all matters in which the Constitution of the United States, an act of Congress or a treaty is concerned, the federal courts have jurisdiction. In as much as the federal Constitution is part of every State constitution and all State judges are bound by oath by that constitution, the State courts also have jurisdiction in cases arising under the Constitution, an act of Congress, or a treaty. But final judgment in such cases rests with the Supreme Court of the United States. In any court of law judgment is rendered only after trial,—or as the Constitution says, by "due

[1] Art. III., 1.

process of law." There is an issue, a disputed point between parties, constituting a "case at law" before the court, and no other issue is tried. Whether the case is tried by a federal or a State court—each having jurisdiction—depends largely on the will of the parties and the advice of counsel.

2. It may be said that jurisdiction often depends upon (a) the nature of the case, or (b) the status of the parties. The Constitution of the United States describes the judicial power of the United States as to the parties and the case in the second section of the third article. Whether or not the case shall be brought in the Supreme Court by appeal from some lower court, or directly,—or as the Constitution says, —come within the "original jurisdiction" of the Supreme Court, depends upon (a) the nature of the case and (b) the status of the parties. The original jurisdiction of the Supreme Court of the United States is limited to cases "affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party."[1]

3. This original jurisdiction recognizes the status of the party as sovereign, or representative of sovereignty. The "State" means the

[1] Art. III., Sec. 2:2.

people of a State,—who, for many purposes are sovereign.[1] Ambassadors, public ministers, and consuls are the agents or representatives of sovereigns. Because of the character,—nature (status) of the parties, the Constitution provides that they may start their case in the Supreme Court of the United States.[2] Rarely is a case before this court at first instance; quite all cases before it are on appeal from an inferior federal court, or from the highest Court of a State (usually called in its Constitution, the Supreme Court). The procedure in cases of appeals is regulated by law; the principal law being the federal Judiciary act of 1789, as amended.

4. The constitution or the law may authorize the existence of a court, but the opinion or judgment of a court rests with the court (the judge, or judges) itself. This discretional power, vested in a court comprises its independence. Judicial independence is the essential characteristic or quality of a court, within its own jurisdiction. Supreme, complete, final jurisdiction exists in a

[1] Discussed by Marshall in Cohens *v.* Virginia, 6 Wheaton 264 (1821); by Hamilton in the *Federalist*, LXII. See also the author's *Essentials of Constitutional Law*, Index, "Sovereignty."

[2] The nature or *status* of the parties is discussed by Marshall in Marbury *v.* Madison, 1 Cranch 137 (1803).

court so vested with power by the people. The opinion of the Supreme Court of the United States is final in all cases which reach it. The opinion of a State Supreme Court is final in all cases which reach it,—unless an appeal lies to the Supreme Court of the United States by reason of the Constitution of the United States, or an act of Congress, or a treaty. The essential basis for such an appeal is that the issue on trial before the State Court involves the supreme law of the land.[1] Thus the fundamental purpose of the entire, vast judicial machinery of the United States and of the States is for the sole purpose of establishing justice.

To this end all courts of law are established.

5. Courts are classified in many ways and for different purposes. And first into federal and State Courts.

Federal courts are.

(1) One Supreme Court.

(2) Inferior Courts.

6. Inferior federal courts are established by the Congress and are constitutional courts, the

[1] By this is meant some *right* of a party to the case (the issue) as determinable by the Constitution, an act of Congress or a treaty is is affected.

judges holding their offices during good behavior.

The inferior federal courts are the Circuit Courts, nine in number, one for each of the great divisions of the people of the United States, made by Congress for judicial purposes; and the District Courts, one for each of the Judicial Districts into which the people of the United States are further subdivided by Congress.[1]

7. Every Circuit Court jurisdiction has a resident judge or judges, and the nine judges of the Supreme Court may preside, respectively, in

[1] The nine Divisions of the country for judicial purposes, known as the nine Circuits, are:

I. Mr. Justice Holmes. Maine, New Hampshire, Massachusetts, Rhode Island, and Porto Rico.

II. Mr. Justice Brandeis. Vermont, Connecticut, New York, 3.

III. Mr. Justice Pitney. New Jersey, Pennsylvania, 3; Delaware.

IV. Mr. Chief-Justice Taft. Maryland, Virginia, 4; North Carolina, 2; South Carolina.

V. Mr. Justice McReynolds. Georgia, 2; Florida, 2; Alabama, 3; Mississippi, 2; Louisiana, 2; Texas, 4.

VI. Mr. Justice Day. Ohio, 2; Michigan, 2; Kentucky, 2; Tennessee, 3.

VII. Mr. Justice Clarke. Indiana, Illinois, 3; Wisconsin, 2.

VIII. Mr. Justice Van Deventer. Minnesota, Iowa, 2; Missouri, 2; Arkansas, 2; Nebraska, Colorado, Kansas, North Dakota, South Dakota, Oklahoma, 2; Wyoming, Utah, New Mexico.

IX. Mr. Justice McKenna. California, 2; Oregon, Nevada, Montana, Washington, 2; Idaho, Arizona, Alaska, Hawaii. (The figure attached to a State indicates into how many Judicial Districts it is divided,—if more than one.)

these Circuits.[1] Each Judicial District has a resident judge (or judges). The number of circuit district federal judges is determined by Congress, and (in theory at least) is determined by the amount of judicial business demanding attention.

8. Territorial Courts and the Court of Claims of the District of Columbia are statutory courts, established by Congress.[2]

The State Courts are:

(1) The Supreme Court.

(2) Inferior Courts.

The Supreme Court (by whatever name known) is a constitutional court; the inferior courts may be statutory courts. State judges are elected, save in Massachusetts, New Jersey, and Florida.[3] Whether a judge serves by election or appointment he serves in a representative ca-

[1] As indicated above. It is many years since a Justice of the Supreme Court of the United States has "gone on circuit." The immense business before the Supreme Court in Washington occupies its full time. However, a Justice of the Supreme Court has jurisdiction and may sit in any Federal Court; indeed, he may sit as a Justice of the Peace or in any State Court, or Court in any American Possession; but he has no jurisdiction outside the judicial jurisdiction of the United States.

[2] The judges in these courts (the Court of Claims consisting of a Chief-Justice and four Associate Judges) are appointed for a term of years, by the President, with consent of the Senate.

[3] In Florida the seven Circuit judges are appointed by the Governor and confirmed by the State Senate. Judges in other courts (the Supreme, the County) are elected, except when appointed by the

pacity, as an agent of the people to perform delegated judicial powers.

9. The inferior Courts of a State (known by various names) have, respectively, limited jurisdictions: that of the Supreme Court being coextensive with the jurisdiction of the State; that of an inferior court being limited by district, county, or city lines,—as the constitution of the State, or a State law may prescribe. Thus, the rank of any court of law is measured by its *jurisdiction*—which is another word for its powers. All these powers are delegated. Within its jurisdiction, a court is independent in its judgments. A higher court as authorized by law, may remand a case, which comes up to it on appeal from a lower court, to this lower court for a new trial, or with instruction to render a particular opinion, or, may reverse the opinion of the lower court, giving final judgment itself, or may confirm that opinion.

The explanation of all this procedure is the *jurisdiction* of the higher court. As soon as a case is entered in any court, that court has (unless an error has been made) jurisdiction as to

Governor to fill a vacancy. Constitution of 1894. In New Jersey (Constitution, 1844) and Massachusetts (Constitution, 1780) all judges are appointed.

that case, and continues its jurisdiction until the case is disposed of. Strictly speaking, no court of law exercises jurisdiction in any matter not before it.

10. State Courts are organized usually for special purposes—*i.e.*, they sit as a particular court,—*e.g.*, as

(1) A Civil Court.

(2) A Criminal Court.

(3) An Orphans (Probate) Court.

(4) An Argument Court (usually to determine appeals; hear petitions, etc.).

(5) An Equity Court.

(6) A Police Court.

(7) A Justice's Court.

(And others)

Whatever the name of the court (and the same judge (or judges) may sit as a civil, or a criminal court) the essential purpose is the same,—to establish justice, and the court sits in a representative capacity.

11. The French judicial system recognizes "Courts of First Instance,"—*i.e.*, in which the trial or examination begins. Usually this is an inferior court, in America,—and commonly with us, justices' courts, police courts, aldermen's,

or mayors' courts are of first instance. But any tribunal below a county, or district court, in America, though it be the tribunal in which the preliminary hearing occurs, is not a court of law in the sense in which that expression is used in American constitutions. Or, to put the matter in another way, no justice of the peace, no magistrate, no mayor, is a judge, or person "vested with judicial powers" (to us a constitutional phrase). Thus commonly we speak of these tribunals of first instance as not being "courts of record."

12. By this we mean, legally, that a court of record is a court (a tribunal of first instance is a "court"), whose acts and proceedings are enrolled as a perpetual testimony,—or (to use the language of the Constitution)—as "judicial proceedings,"[1]—a court which has jurisdiction to fine or imprison, or has jurisdiction of civil causes above an amount fixed by law (jurisdiction of criminal causes also),—and which proceeds according to the course of the common law.[2] Thus courts "not of record,"—as justices and magistrate's courts differ from "courts

[1] Art. IV., 1.

[2] 37 Maine, 29; also 8 Mass. 171. (Opinion by Shaw, C. J.)

of record" in degree, or jurisdiction: which means no more than this,—that the people have vested greater judicial power in the one, than in the other. All American courts, of whatever jurisdiction, keep a record of all cases which come before them. The record of the case in the justice's or magistrate's court may be brought, by due course of law, into the higher court and be there incorporated in the records of that court. The essential here is that every court of law "proceeds upon inquiry, and renders judgment only after trial."

13. This fundamental function and duty of a court of law is to say what the law is.[1] This implies the power of the court to pronounce whether or not the law harmonizes or conflicts with the Constitution. Any court of law, State or federal, possesses this power. It follows that government in America is a government of law as interpreted by men. State constitutions usually prescribe that these men,—the judges,—shall be "learned in the law,"—*i.e.*, experts in judicial matters. The written federal Constitution does not prescribe that federal judges shall be "learned in the law," but all federal judges

[1] Marshall in Marbury *v.* Madison, 1 Cranch 137 (1803).

are such men, the practice (as it were, the unwritten law) settling the matter.

14. The American system of government provides for trial by jury,—which always obtains unless such procedure is waived by consent of parties. Every legal trial in whatever court of law, is by "due process of law." This brief phrase covers all that the people of America,—as a nation, or acting by States, have authorized in ordaining and establishing "a republican (representative) form of government."[1]

[1] *The American Judiciary*, by Hon. Simeon E. Baldwin, LL.D., remains the best account of the entire subject, in small compass.

The *Federalist*, Nos. LXXVIII.-LXXXIII., by Hamilton, is the classic exposition of the Judiciary, contemporaneous with the making of the Constitution.

J. P. Cotton's *Constitutional Decisions of John Marshall* reprints the opinions of the great Chief-Justice (*i.e.*, of the Supreme Court of the United States in his time), 2 vols.

The constitutions of the several States (see *Charters, Constitutions,* and *Organic Law of the United States*, etc.) show the general organization of the State judiciary, but only State laws, and local (especially city) judicial organization can explain much of the judicial system in a State. The actual working of American courts, discussed ably and somewhat at length by Bryce (*American Commonwealth*) and others, can be known only by practice, observation, and experience. Judge Baldwin (cited above) presents the whole case. Such publications as the *American Bar Association Journal*, the *Law Review* (Harvard, Yale, Boston, etc.), and other (numerous) current publications (articles) of a legal character, contribute to an understanding of the subject. The reader is also referred to the bibliography preceding the Index to the present volume.

CHAPTER XI

THE ADMINISTRATIVE
(State and Federal)

1. By administration is meant

the activity of the government with the exception of the activity of both the Legislature and the Courts; . . . the activity of the executive officers of the government. The government administers when it appoints an officer, instructs its diplomatic agents, assumes and collects taxes, drills its army, investigates a case of the commission of crime, and executes the judgment of a court. Whenever we see the government in action as opposed to deliberation, or the rendering of a judicial decision, there we say is administration. Administration is thus found in all the manifestations of executive action.[1]

2. The Executive,—State or federal,—is the chief administrative official within his jurisdiction. In an early day, when society, industry, commerce, and human activity in general were comparatively simple, the Governor, the President, was easily able to attend to the details of

[1] F. J. Goodnow, *Administrative Law*, i., 1.

public business committed to him, but with the almost unmeasurable increase of all these activities,—transportation, education, public health, insurance, etc., the Chief Executive is unable alone, to secure efficiency of administration,—whence it follows that he must depend upon others to secure efficiency. The administrative officials in State and in Nation number many thousands: they are all public servants,—holding office by appointment of the Executive,—sometimes by direct election by the people.

3. In the federal government, "the principal officer in each of the Executive Departments"[1] is an administrative official,—and these "principal officers" comprise the President's Cabinet. These departments (and the time of their creation) are, of:

(1) State, 1789.
(2) Treasury, 1789.
(3) War, 1789.
(4) Attorney-General. Office established, 1789; Department of Justice, 1870.
(5) Navy, 1798.
(6) Post-Office. (As a Department, 1829.)

[1] Art. II., § 2, 1.

(7) Interior, 1849.
(8) Agriculture, 1889.
(9) Commerce (and Labor), 1903.
(10) Labor, 1913.

4. The head of a Department is known as the Secretary, *e. g.*, of State,—of War, etc. He is appointed by the President. The Cabinet,—as this group of Secretaries is called in America, comprises the President's official advisers,—but he is free to accept or to reject their suggestions.[1]

5. The President is not an administrative official. If a member of the Cabinet is entrusted with a strictly executive duty, like the President, he cannot be controlled as to performance of that duty by legislation or judicial action,—*i. e.*, by Congress, or by the Court. If the duty of the cabinet officer be ministerial,—he having no discretion in its performance,—a court of law may compel him to perform it (usually by *man-*

[1] The conduct of the enormous business of the United States rests with the President. He is responsible to the people for the faithful execution of his office. (Art. II., § 1: 8.) He cannot delegate his responsibility. Strictly speaking,—all the duties of the President are executive; all the duties of cabinet officers and officials in the several departments are ministerial,—but the Congress may by law make the performance of an act by a cabinet officer, or "head of a department" discretionary, and to that extent, *executive*, and not *ministerial.*

damus; if forbidding performance, by *injunction.*)[1]

6. In the service of the people of the United States,—subordinate officials and employees in the "executive departments" of the federal government,—there are more than half a millon persons. The service of these persons is known as the civil service. The public service demands efficiency. Ability and experience are essentials to such efficiency. Permanency in office contributes to efficiency. Since 1883,[2] when Congress enacted the first civil service law the transition from the "spoils" to the "merit" system has made progress. The essentials of the civil service system are:

(1) The appointment shall be of capable public servants, capability to be determined by "civil service examination." Politics, party affiliation not to determine the choice.

(2) Competent public servants shall not be discharged except for cause, the civil service

[1] (Mandamus)—Marbury *v.* Madison, 1 Cranch 137; Gaines *v.* Thompson, 7 Wall 347; The Secretary *v.* McGarrahon, 9 Wall 298; U. S. *v.* Black, 128 U. S. 40; U. S. *v.* Windom, 137 U. S. 636; U. S. *v.* Blaine, 139 U. S. 306; New Orleans *v.* Paine, 147 U. S. 261.

(Injunction) Mississippi *v.* Johnson, 4 Wall 475; Georgia *v.* Stanton, 6 Wall 57. The principle applies to State executives.

[2] January 16th.

law protecting the incumbent against discharge except for incompetency, neglect of duty, conduct compelling dismissal "for the good of the service." The civil service law empowers the incumbent to defend himself as a public servant. In belief, he or she, under the law, cannot be removed except "for cause." Mere political opposition is not a sufficient cause for removal.[1]

7. The principle of the civil service conforms to that of representation.

As Lincoln said,—"ours is the people's government." The public business,—the government,—is their business. That it be conducted efficiently is the will of the people. Whence the civil service law of 1883, and later amendments.[2]

8. Within the State, administrative efficiency is demanded by the people,—the demand taking the form of constitutional provisions, of statutes, and of public opinion.

Prior to 1840 the State constitutions may be said to contain little or nothing specifically ad-

[1] See chapter XXVIII, "The Civil Service," in James T. Young's *The New American Government and Its Work*—with its references to authorities for details. The principle of the civil service is rapidly being given application and extension by the States.

[2] Not all administrative officials come under the civil service law. *E. g.*, it does not apply to cabinet officers, or (generally speaking) to principal (subordinate) officials in the "executive departments."

ministrative in character. To-day, every State constitution (in its original form, or by amendment) contains such provisions. The trend, at present, is toward the establishing of commissions, or provision for a Commissioner, that shall be responsible for efficiency in a Department of the State government. No two States have quite the same Departments,—but in the aggregate, these appear:

Justice.
Education.
Mines and Mining.
Labor.
Insurance.
Health.
Banking.
Roads and Highways.
Forestry.
Charities and Corrections.
Corporations.
Taxation and Finance.
The Sinking Fund.
Railroads and Canals.
(And others)

9. A Commissioner (or a Commission) is vested with authority as the head of these (and other) "executive departments,—" the head

being appointed by the Governor (with consent of the State Senate) or elected by the people, or appointed by the Legislature,—as by law provided.

The aggregate number of administrative officials in the forty-eight States is very great, for it includes local, county, municipal, State whose activity is not legislative or judicial,—the Governor himself also excluded.[1]

10. A marked tendency in recent State constitutions is to make all important administrative offices elective. The essential purpose in the administration of the State governments, as in that of the United States, is to establish justice. Efficiency of administration is the test. Franklin's words in the closing hour of the federal Convention are pertinent:

> There is no form of government but what may be a blessing to the people if well administered; and I believe further that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other.[2]

[1] The number of State administrative officials is not available as an exact number. The number increases continually and includes all employees in the Departments.

[2] One is reminded of a passage in Pope's celebrated letter to Bishop

The fate of representative government depends upon its administration.[1]

Atterbury, November 20, 1717: "I hope all churches and all governments are so far of God, as they are rightly understood, and rightly administered."

[1] Our every day relations with government,—federal or State (especially local), reveal the efficiency or the inefficiency of administration. Maladministration of office is sufficient cause for impeachment, conviction, and removal from office. Reëlection, or re-appointment of an official, is evidence (generally) of that official's efficiency. The whole subject, "The Administrative," is discussed in its legal aspects, by President F. J. Goodnow in his two volumes on *Comparative Administrative Law* (the U. S. A. and England, France, Germany), and his volume on *Administrative Law* treating of the U. S. A. The economic aspects of "Administration" are treated by many writers. Any standard textbook on Economics, Transportation, Finance, Trade and Commerce, etc., discusses the subject and (usually) gives an adequate bibliography. The issues between political parties are (usually) administrative. Magazines, newspapers, books, pamphlets are ever presenting some phase of administration. The official term of Presideut or Governor is called an *administration:* a fact that tells the whole story.

For an account of the new civil administrative code of the State of Washington (1920–21), see *The American Science Review,* November, 1921, and the same for administrative consolidation in California.

CHAPTER XII

POLITICAL PARTIES

1. Persons organized as a unit in order to control the public business (the government) according to political ideas held by them in common comprise a political party. Government in America, State and federal, is party government. Sometimes (very rarely) when the public business is in a critical condition, a coalition government is formed,—that is, the chiefs of state are, in the aggregate, the representatives (usually the leaders) in the two or more parties into which the people are divided. In America, such a coalition government is formed when a chief executive, State or federal, summons to his council,—his Cabinet,—as heads of executive departments, the representatives (usually the leaders) of contending parties.[1]

[1] Washington thus summoned Hamilton as Secretary of the Treasury, and Jefferson, Secretary of State. The irreconcilable opinions of these two men led finally to their resignation from the Cabinet. Lincoln's Cabinet was a coalition. Here difference of opinion among

2. Every political party strives to become the majority and thus to control the public business. It is impossible to define all the differences of opinion which characterize political parties; the principal differences are shown by their respective "platforms," or party creeds. These platforms, the separate parts or paragraphs of which are called "planks," are adopted by representatives or delegates of the party assembled in Convention,—the name of these Conventions,—County, State, National indicating the political jurisdiction represented. In these Conventions, platforms are adopted and party candidates for office are named. The platform and the candidates agreed upon, the Convention adjourns, *sine die*, and the people (the voters) within the jurisdiction, at the polls, accept or reject the platform and the candidates. Or, nomination of a candidate may be made by "petition,"—*i. e.*, by signature of a percentage of the voters within the jurisdiction,—the percentage is fixed by law,—and this candidate is voted for or

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counselors of an executive do not mark the council as a coalition. The difference must be partisan. President Wilson was criticized, in certain quarters, because he did not form a Coalition Cabinet during the World War, and did not summon some other than men of his own party as advisors when he went to the Versailles Conference.

against, as all the candidates named by a convention.

3. Plainly, here, the principle of representation is followed,—in choosing delegates to the Convention,—in nominating candidates, and in the election of them.

Historically, there are two great parties in the United States,—the Hamiltonian and the Jeffersonian,—*i. e.*, the party of *liberal*, and that of *strict* construction of the Supreme Law of the land. The history of political parties in America discloses marked variation from this difference, at times; the Hamiltonians supporting the Jeffersonians.[1] The issue between parties is usually administrative, as for example, *taxation:* not that there *shall* or *shall not* be taxation, but shall this or that article or interest be taxed and *how much:* essentially, an issue of *method*, or *procedure*.

4. At present the American people are divided, politically, into three national parties, the Republican, the Democratic, and the Labor Party. There are minor groups, or parties, strictly local.[2] The platforms of parties must

[1] As in 1803, in the purchase of the Louisiana country; again, in the support of Lincoln's policies by Jeffersonians, 1860–65.

[2] For the platforms of present parties see the *World* or the *Tribune*

always be interpreted by events. Usually, the language of a platform is ambiguous. The makers of party platforms usually succeed in avoiding direct issues, leaving these to be discussed,—if at all,—during the campaign, by selected speakers of the party. Each party publishes a handbook for the use of its speakers —as a guide, monitor, and unifying element in the campaign. This handbook or manual, contains statements, statistics, and other matter defensive of the doctrines of the party, and as destructive as possible of the doctrines of opposing parties.

5. Not only speakers, but newspapers, magazines, books, pamphlets, and a vast "campaign literature" support the party. Also business helps by subscriptions,—as do candidates for office, at the hands of the party and their friends. The total expenditure of energy and money is almost fabulous, in a campaign. In order to prevent bribery and corruption, laws regulate the amount of money a candidate may expend in a campaign, or require him to file a report (open to the public) of the amount expended.[1]

Almanacs. For platforms 1789 to 1896, see T. H. McKee's, *National Platforms of All Political Parties;* also the standard encyclopædias.

[1] The wealthy candidate has the advantage of the poor, in a campaign, unless the law strictly regulates expenditure, by or for the

6. Each House of the Legislature of a State, each branch of the Congress is "the judge of the elections, returns, and qualifications of its own members,"[1]—and a majority of each House renders the final judgment. The majority is always of one party, and usually, in case of a disputed election,—*i. e.*, of two persons claiming the right of a seat in the body, the vote admitting either claimant is political,—partisan. Thus Republican members usually vote for the Republican claimant; Democratic members for the Democratic.

However, party lines are often broken, in a vote on the case, according to its merits.

7. A disputed election of executive or ministerial officials is usually settled by the recount of the ballots in a court of law.[2]

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candidate. It is not unusual for a candidate, or his supporters, to expend more for his election than the salary of the office he seeks. The Newberry-Ford case (Michigan,—election to U. S. Senate) illustrates fully the use of money in elections. (See *Michigan Senatorial Election* 67th Congress, 1st Session, and accompanying documents.)

[1] Art. I., § 4.

[2] A very important exception is the case of disputed election of President and Vice-President of the United States. See Constitution, Art. II., §§2, 3; and Amdt. XII. Usually a disputed election of a Governor is settled by the Court. Examination of the State constitution will reveal any other procedure.

8. Political parties, duly organized according to law, are essential to the administration of representative government. As yet, no substitute for them has been discovered. They afford every voter an opportunity to express his will, as to government. He may, if he chooses, vote independent of any party. The ballot is printed and distributed usually, by authority of the State. The voter must use this imprint, but he is free to add to, or to omit, any name printed on the ballot.[1] Without exception, voting by the people directly, is by ballot; voting by their representatives in the Congress, or the State Legislature is *viva voce*. In either case, the voter votes (or is supposed to vote) a free vote,—*i. e.*, as his judgment dictates. Election laws, State and federal, aim to secure this freedom.

9. In America all voting is done by means of State machinery, or procedure. There is no distinctively federal procedure. The United States utilizes the States in elections. Thus on the official State ticket there appear names of candidates as presidential electors, as Senators of the United States, as Congressmen,—*i. e.*, members of the federal House of Representatives. That

[1] This addition or omission is called "scratching" the ballot.

the United States has power to regulate federal elections,—as to time, manner, and other details, is unquestionable.[1]

10. In order more perfectly to apply the principle of representation the people have (or may have) different days for State, city, and federal elections, thus securing undivided attention to the issue,—be it the one or the other. This procedure prevents, or tends to prevent, neglect or confusion of interests. When a State election occurs at the same time as a presidential, the vote for Governor may merely be due to the vote for President,—though, were the election of a Governor the principal issue, the result might be very different.[2] Ordinarily if a State goes Democratic or Republican in a presidential election, if a Governor is also to be elected, the vote for Governor will be practically the same as for President.[3]

11. There are more than twice as many

[1] *Ex parte* Siebold, 100 U. S., 371 (1870). *Ex parte* Yarborough, 110, U. S., 651; Wiley *v.* Sinkler, 179 U. S., 58 (1900).

[2] Grover Cleveland's election as Governor of New York, R. B. Hayes' of Ohio, Woodrow Wilson's of New Jersey, in presidential years, despite the election of a President of an opposite party, made them, later, presidential candidates.

[3] In this case the gubernatorial candidate is said to "run ahead of," or "behind" his ticket; the presidential vote being the unit of measure (or any other candidate for a State office).

"inhabitants" of the United States,—*i. e.*, "people" in the common use of the word,—than "voters."[1] Rarely do more than one third of the voters vote. A candidate is usually elected by a majority of a minority of voters. However, the representative principle here prevails. If government in America is actually controlled by a minority,—that minority is a majority of actual voters and represents all the people within the jurisdiction concerned.

12. Should this be remedied? Can it be remedied? Should every person in the United States, qualified to vote, be compelled to vote, or suffer a penalty?[2]

Is the idea (or principle) regulating elections, by law, the same idea (principle) as compelling the voter to vote? Would the principle of representation,—which is the pivot on which all republican governments turn, be violated or observed by compulsory voting?

13. In other words, is a "republican form of government," such as prevails in America, any

[1] The present population is about 110,000,000; the number of voters, about 55,000,000; there being about 1,000,000 more male than female voters.

[2] Compulsory voting was tried in Georgia, penalty for absenting and neglecting to vote, not exceeding five pounds, *Constitution, 1777*, Art. XII. Failure.

less or any more representative if voters are free or are compelled to vote at elections? Would American political institutions be more or less secure, if compulsory voting at elections was the law of the land?

14. By free and frequent elections, the people control government in America. Government with us always reflects the will of a dominant political party.[1]

[1] The subject,—*elections*, is discussed by every writer on government in America. The use and the abuse of elections are quite endless subjects of examination. The details of elections can be learned, in any State, only by examination of its election laws. Usually these are obtainable in a single volume,—together with instructions for election of officers. No one book giving the election laws of the several States exists. The authorities cited in the bibliography at close of the present volume discuss "elections" in their various aspects. For a special work on the subject see M. Ostrogorski's *Democracy and the Organization of Political Parties;* Bryce's *American Commonwealth;* P. O. Ray's *Introduction to Political Parties and Practical Politics.* The whole subject is involved in the larger *Politics. The American Party System,* by Charles Edward Merriam (1922), is the most exhaustive work on the subject; it comes into the author's hands too late to be included in the Appendix, "I. A Word About the Books," or to be indexed.

CHAPTER XIII

PUBLIC OPINION

1. Behind American government, whatever the jurisdiction, federal or State, lies public opinion. In its nature public opinion is a quality or element of a people as a whole, being composed of a consensus of many minds; essentially, of the majority. It is in a large sense the "They say" of a people, and finds expression in individual speech, in utterances spoken and written,—conversations, speeches, sermons, books, newspapers, pamphlets, circulars, notices,—even whisperings.

2. The forms and the agencies of its expression are numberless. Public opinion is doubtless, at some time, a private thought and usually this thought spreads by means of the agencies above mentioned. Nor is public opinion necessarily the thought of the educated class, or of the mob. Even public opinion has, as it were, its jurisdic-

tion, or domain,—local at one time, continental at another.

3. Thus it finds expression in conformity to law,—as at the polls, or in defiance of law, as at a lynching. It dominates a precinct, a ward, a portion of a city or a county, supreme over law and order, or supreme when there is no law. It is not the opinion of a class or cult,—as of this group of artisans or that group of religionists,—for groups, or sects, or factions in society may be controlled by a public opinion held by a greater number than their own. Thus "the public" has "rights" which common carriers must respect, even though these carriers are at war among themselves. Steamboats and trains must run, telegraphy and telephony must serve, despite "strikes," "lock-outs," wage-disputes, disputes over time, and the like.

4. Public opinion wills that the "public" shall suffer no harm. Thus public opinion supports constitutions and laws,—or condemns them,—with the result that the law is "a dead letter," or is supreme.

5. The principal problem which all rulers,—all candidates for office,—all officials,—all agents of the people in government seek to solve is to

discover and to comply with public opinion. In brief this problem consists in knowing and doing what is "popular." Doubtless, in America, the best illustration of this concern is the compliance, or effort at compliance, which a representative makes with respect to his "constituency,"—that group of people,—usually organized as a District, which he represents. How often does he "consult" his constituency? By attention to letters from persons of influence in it. By assiduous attention to its newspapers,—their editorials, their "letters from the people." He consults and confers with its "prominent" citizens. He believes he knows its "public opinion." If occasion demands,—he goes among his constituents,—converses with all sorts and conditions of people, and shapes his course accordingly.

6. In an absolute monarchy public opinion is the opinion of the monarch, which he imposes on his subjects by force. In a representative government, public opinion is the will of the majority which it imposes on the minority. Essentially the rule of public opinion is by force. The difference is that between a power of the people and one not of the people. No more comprehensive, epigrammatic definition of repre-

sentative government, in all aspects of government has been made than Lincoln's "government of the people, by the people and for the people." Substitute "opinion" for "government" in this saying, and you have a description of the power, or force, which controls in America.

7. Public opinion is ascertained by elections. Samuel Adams was wont to say,—"When frequent elections cease, liberty dies." The frequency of elections depends upon the will of the majority. Shall there be annual, biennial, or quadriennial elections for State legislators, or other public servants? Shall a State Legislature sit a year or a number of days fixed by the State constitution?[1] The tendency in America, as dominated by public opinion, is to limit sessions of State Legislatures to biennial sessions; to fix the length of a session by the State constitution; to forbid special legislation; to forbid, by the same authority, legislative consideration of new bills the last (three, ten?) days of a session, and to discourage extra sessions (unless called by the

[1] The Constitution of Georgia provides, "No session of the general Assembly shall continue longer than forty days, unless by a two-thirds vote of the whole number of each house." Vote of 1877. Art. III., § 4, Part VI.

Governor) or "prolonged" sessions by limiting the pay of legislators during such sessions.[1]

8. This means that public opinion, demanding efficiency in government,—*i. e.*, at the hands of public servants,—seeks to realize it, in legislation, by constitutional restrictions. A similar demand may be found in constitutional restrictions as to executives and administrative officials.[2]

9. In America public opinion usually finds expression in public meetings in which current issues are discussed by influential citizens. At time of agitation of a matter, these meetings are usually attended and addressed by persons not identified with politics or the public business. Known abstention from identification of such persons with politics usually adds to the influence of these gatherings.

10. Sooner or later, every important interest and aspect of government is subjected to this test of public opinion. Public servants who act counter to it are sure to be displaced by others who will obey such opinion. It is evident how

[1] Examination of State constitutions, made during the last thirty years, will supply illustrations. See Ala., 1901; Arizona, 1912; Del., 1897; Miss., 1890; N. Y., 1894; Mich., 1850, 1908.

[2] The instructor may advantageously call the attention of the class to such restrictions in State constitutions. See *American Charters, Constitutions, and Organic Acts.*

essentially important is a healthy, a moral public opinion.

11. Of the organs of public opinion in America newspapers undoubtedly rank first.

> Were it left to me [wrote Jefferson], to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.[1]

12. Dr. Franklin aimed to educate public opinion, which he did with marvelous skill and power by his English and American pamphlets.[2] He is ever advocating thrift, material and moral; self-improvement; self-education; the use of the right book; the value of historical studies; the value of debating societies; of public libraries; of scientific experiment,—and of education in general.[3]

Lincoln molded the public opinion of all the northern States as to slavery by his Debates with Senator Douglas in 1858.[4]

[1] Letter to Carrington, January 16, 1787.

[2] See particularly his *Rules for Reducing a Great Empire to a Small One*, and his *Edict of the King of Prussia*,—also his *Humble Inquiry Into the Nature of Paper Money*.

[3] See *Franklin's Influence in American Education*," Report, U. S. Bureau of Education, 1902.

[4] Printed in editions of Lincoln's *Works* (Century, Gettysburg, or Putnam Edition) and in special editions.

13. The pulpit is a powerful organ of public opinion to which government in critical times appeals.[1]

14. Sometimes a single pamphlet as Paine's *Common Sense*, consolidates public opinion.[2]

15. Of vast influence in molding public opinion in America are the attitude, the interests, the claims of particular classes. This is shown by the industrial history of the country. Public opinion demands a fair wage and a full day's work for artisans, employees, for skilled or unskilled labor. "Strikes," "Walk-Outs," and labor difficulties generally receive or are denied the support of public opinion as they succeed or fail; or, fail or succeed as they receive, or are denied the support of public opinion.

16. There is a saying in America, "Public Opinion rules." Always there is demand for "justice." "Why"—asked Lincoln, "should there not be a patient confidence in the ultimate justice of the people?" The important word here is "ultimate." After all, government in

[1] *E. g.*, Lincoln's appeal to the churches; Harding's, as to support in the matter of the Disarmament Conference, Washington, 1921. Thanksgiving Proclamations (by Governors and Presidents).

[2] Doubtless this pamphlet is unique in American history in its immediate influence. See the author's *Constitutional History of the United States*, i., 71.

America rests on public opinion and the "ultimate justice of the people."

17. Thus we must return again to the principle of representation. Government in America, federal and State, represents public opinion. It may be the opinion of yesterday; it is never the opinion of the future. Indeed, it is not always,—or even often,—the public opinion of to-day.

18. Stability is a fundamental quality sought in government. A representative government is subject to frequent, sudden, even violent fluctuations of public opinion. Hence the perils of such government.

19. Unquestionably written constitutions are a forceful stabilizer of representative government. The forces which work for justice stabilize public opinion.[1]

[1] Bryce devotes twelve chapters (Part IV.) of his work on *The American Commonwealth* to a consideration of "Public Opinion." An immediate entrance to the importance of the subject may be found in *The Congressional Record,* whose pages reflect public opinion in "Petitions," "Bills Introduced," "Messages from the President"; speeches; reprints of editorials, public addresses, from all parts of the country; and statistics, data, information quite on every subject of interest to mankind. The instructor may advantageously call attention of the class to organs and agents and expressions of public opinion,—*e.g.,* Stowe's *Uncle Tom's Cabin* (1852), which greatly influenced public opinion as to slavery; the Hamilton-Burr duel (1804) affected public opinion as to dueling; Henry Ward Beecher's addresses in

England (1863), which influenced British opinion as to the Civil War in America; the sinking of the *Lusitania* (1915), which influenced public opinion in America as to the attitude of this country in the World War. In local matters, many illustrations of elections as determined by public opinion.

CHAPTER XIV

INTERNATIONAL RELATIONS

1. Because the United States,—*i. e.*, "We the people of the United States" are sovereign, they have international relations. They constitute a nation,—an equal sovereign among equal sovereigns.[1] The Supreme Law, the Constitution of the United States, recognizes international law and international relations by providing (1) That all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land";[2] the President "shall have power, by and with the advice and consent of the Senate to make treaties,"[3] and "in all cases affecting ambassadors, other public ministers and consuls, the Supreme Court shall have original jurisdiction."[4] These positive provisions distinctively recognize international law as part of the supreme law of the land.

[1] *Pares inter pares* is the technical expression.
[2] Art. VI., 2. [3] Art. II., § 2–2. [4] Art. III., § 2: 2.

2. But negative provisions further define limitations,—viz: "No State (*i. e.*, American Commonwealth) shall enter into any treaty, alliance, or confederation."[1] Nor is this the conclusion of the matter: to the extent that the United States is delegated with sovereign powers (these powers, strictly speaking are not sovereign —for sovereignty cannot be delegated; they are powers delegated by the sovereign,—"the people of the United States ")—*e.g.*—

To coin money,
To declare war,
To regulate commerce,

it alone (not a Commonwealth) can exercise these powers. This limitation of the powers of the States wholly eliminates them from the status or rank of nationality.

3. As members of the Union the several States are in equality, one with another,—or, as the law expresses the relation, whenever a new State is admitted,—"on an equal footing with the original States."[2]

[1] Art. I., § 10: 1.

[2] Art. I., 8: 17; 9: 6, 8; 10: 1, 2, 3; Art. III., 2: 1, 2, 3; Art. IV., 1: 1; 2: 1, 2, 3; 3: 1, 2; 4: 1; Art. V.; Art VI., 2, 3; Art. VII., 1; Amendments VI., X., XI., XIII., XIV., XV., XVI., XVII., XVIII., XIX.

4. While, with respect to each other the States have entirely separate jurisdictions, foreign to each other,—they are not in international relations.[1] There is a similarity, between the United States and a State in the matter of jurisdiction, in that the jurisdiction of each is limited, —that of the State as a municipality,—that of the United States as a nation. No nation has jurisdiction outside of its own domain except with consent of the other nation, usually expressed by treaty. Consent thus given is not an abandonment of sovereignty excepting by consent of the sovereign. Thus every treaty,—being an agreement between or among sovereign powers is a concession made by the sovereign for a consideration (trade, land, privileges) for a term of years. Only a sovereign power can make a treaty.

5. International law being recognized by the Constitution of the United States becomes the law of the land, and therefore in every State. Because of this law, the people as a whole and

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See the "enabling act" for admission of a State in *Charters and Constitutions," e. g., Enabling Act of Montana*, 1889, iv., 2289.

[1] See references, previous note, as to State equality, and interstate relations, particularly as to judicial records, privileges, and immunities of citizens, etc.

the people as individuals are bound. Thus whatsoever rights are agreed upon by two or more nations (the high contracting parties) as to persons or property control in all cases arising, in these nations, during the life of the treaty. An example is the case of one Yaker. At the time of his death, in 1853, in Kentucky, he possessed real estate there, but was an alien, born in Switzerland, never having become an American citizen. By the treaty of 1850, with Switzerland,[1] a citizen of his own country and his heirs were entitled to his estate precisely as if it were in that country. By this treaty the alienage of Yaker afforded no cause for Kentucky to confiscate his property, or in any way to deflect it from its lawful course to his heirs.[2] Had there been no treaty "made pursuant of the authority of the United States" between our country and Switzerland, Yaker's property would have passed according to the law of Kentucky,—*i.e.*, not according to what may be called positive international law.

6. The basis of international law is the

[1] 11 Statutes-at-large, 587.

[2] Honer *v.* Yaker, 9 Wallace 32 (1869). See also The People *ex rel.* The Attorney-General *v.* Gerke, 5 Cal. 381 (1855); Head Money Cases, 112 U. S. 580 (1884).

necessity of relations,—peaceful, hostile, commercial, ethical, political,—between nations. In brief, the United States is a Nation, and therefore has such relations. In other words, the United States as a Nation is a subject of international law, a party (one might say a natural party) to such law. The Nation is a State precisely as that word is used in the Constitution in the expression "foreign States."[1] But as a subject of international law the United States is no more, no less a "state" than is any other, be it as vast as Russia, or as small as Panama. As a subject of international law the United States is concerned as to its existence and continuity; its rights, duties, and responsibilities.

7. As an international power, the United States considers its own interests and those of other powers, and those of the whole world. As an international power, the United States, through President Harding, called the Disarmament Conference at Washington, in November, 1921. The call came from the United States,—was given to such powers as the United States believed it expedient to call for the purpose proposed. The particular powers so

[1] Art. III., § 2: 1.

invited to attend were powers whom, by reason of circumstances, the United States believed could best effect the end desired,—the reduction of armaments. The United States has not power to *compel* such reduction.

8. There can be no contract between a Nation, and an American Commonwealth. There is no world power that can *compel* world-obedience to its will because of any world-constitution of government. The Constitution of Nevada provides that:

> The Constitution of the United States confers full power on the federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the federal Union, or forcibly resist the execution of its laws, the federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority.[1]

The Constitution of Mississippi provides, that:

> The right to withdraw from the federal Union on account of any real or supposed grievance, shall never be assumed by this State, nor shall any law be passed in derogation of the paramount allegiance of the citizens of this State to the government of the United States.[2]

[1] 1864. Declaration of Rights, Art. I., 2.
[2] 1890. Bill of Rights, Art. III., § 7. See also § 6.

9. The Constitution of Maryland, of 1864, provided that:

> The Constitution of the United States and the laws made in pursuance thereof being the supreme law of the land, every citizen of this State owes paramount allegiance to the Constitution and Government of the United States.[1]

The constitutions of Nevada and Maryland were adopted amidst the stress of civil war; that of Mississippi, in time of peace. Undoubtedly the authority and the allegiance here recognized are fundamental in American government, though at no other time and nowhere else so expressed by an American constitution. The essential idea here is that of recognition of national sovereignty.

10. The objects of international law are territorial domain, boundaries, territorial waters, the high seas, aërial space and citizens or subjects. By international law the relations between the United States and other nationals are determined, such as the rights and duties of diplomatic agents, of consuls, of international conferences, or tribunals and the meaning of treaties. The power to declare and wage war

[1] Declaration of Rights, Art. V.

rests wholly with the Nation through Congress.[1] The expediency of war is a wholly different matter. Thus methods of warfare are largely national methods, but international law is appealed to as to lawful or unlawful methods. A nation may preserve neutral rights,—the question of neutrality being one determined and settled by judicial decisions.[2]

11. As treaties made by authority of the United States are a part of the "Supreme Law of the Land," the rights, privileges, and immunities of persons may be affected by them,—whence "private international law." But whether international law be involved, as public or private, the issue is, distinctively, a national, or federal issue. The United States has jurisdiction in the case, or is a party to the case, or is in some way involved. The case is not a Commonwealth case. The ideas which underlie modern international law are ideas of World-Unity. This lofty notion is not peculiar to our age. The ideas and principles of some such unity may be discerned in

[1] Art I., § 8: 11.

[2] The principal compilation on the subject is Dr. James Brown Scott's *Cases on International Law Selected from Decisions of English and American Courts.* (A valuable "Syllabus" practically classifies these cases.)

other ages. They may be said to be the guiding-star of statesmen.[1]

[1] Standard textbooks in international law may be consulted for details. A. S. Hershey's, *The Essentials of International Public Law*, gives twenty-eight pages to its "List of Authorities." Other valuable treatises are by Hannis Taylor, Wilson, Davis, Stockton, Tucker, Wheaton, Westlake, Walker, Lawrence, Halleck, Ferguson—(and especially) the *American Journal of International Law*, and J. B. Moore's monumental work, *A Digest of International Law*, 8 vols. Washington (Government Printing Office).

The instructor may advantageously bring before the class current literature on important conferences, congresses, international events (as in commerce, diplomacy), also "Memoirs" by persons who have been in the diplomatic service (*e. g.*, J. W. Foster's); Consular "Reports"; publications of the Carnegie Peace Foundation. Current publication of international law material is listed extensively in *The American Political Science Review*. If we turn to the past, to the history of Europe, the idea of a World-Union may be traced in St. Augustine (*De Civitate Dei*), in Macchiavelli (*Le Principe*), in Cavour; of a domination, in Napoleon, in Prussianism as seen in the recent World War. And at present, in peaceful agreement among nations by amicable conference, based upon "common counsel, mediation, administration, and judicial determination in controversies." (President Harding in Message, December 1, 1921.) A very large (perhaps the largest) question (problem) in modern international law is to reconcile individual state (national) sovereignty with (one) world-sovereignty.

CHAPTER XV

THE PRINCIPLES OF AMERICAN GOVERNMENT

1. The principle at the foundation of government in America, national, State, local, is that of representation. This principle is involved in that provision of the Constitution that the United States guarantees to each State a republican form of government.[1] But the guarantee is limited to States "in this Union." Such a government is not guaranteed to Territories, or to outlying possessions. Over the territory or property of the United States the Congress has power "to make all needful rules,"[2] or, if it chooses, "to dispose of" such territory. Thus the Congress could, in the exercise of its powers sell, mortgage, or trade off Alaska, Porto Rico, or the Philippines. Grave apprehensions have been expressed in certain quarters, lest the Congress exact unjust and oppressive legislation affecting the territory or possessions of the

[1] Art. IV., § 4. [2] Art. IV., § 2.

United States, but such fears find no justification in our history. "There are certain *principles* of natural *justice* inherent in the Anglo-Saxon character, which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests."[1]

2. This means that the principles on which American government is founded always work justice. "To establish *justice*" is the supreme, the sole end and purpose of government, not only in America, but everywhere,—if men live up to the essential principles of life.

3. But what of the *form* of government? Ours, in its every aspect, is "republican" (representative) in form. Indeed, in all our constitutions we emphasize the importance of the *form of government*. And here appears the recognition of the mechanics of government,—the system of "checks and balances," as it was familiarly called early in our history.[2] By this system, while the executive functions delegated by the people are conceived as distinct from the legislative and the judicial; the legislative dis-

[1] Downes *v.* Bidwell, 182 U. S. 244 (1901).
[2] As in the *Federalist* (1788).

tinct from the executive and the judicial; the judicial distinct from the executive and the legislative, "that it may be a government of laws (principles) not of men," yet the three functions coöperate as a unit, and each works as a check on the other.

This nice balancing, yet coöperation of parts, characterizes American government whether local, State, or federal.

4. The laws are made by the legislative power,—the Congress, the State Legislature, the city Council. But the Mayor, the Governor, the President, participates in the act by approving or disapproving the proposed measure; and "it is the province and the duty of the Court to say what the law is."

5. Administration is identified in some way with the executive, the legislative, the judicial,—one, or two, or all. At the foundation are the people of the United States, the people of a State, the people of a local jurisdiction (city, town, borough, county, township),—who, directly or indirectly, elect a person (or persons) to represent them in an office (*i.e.*, a function) legislative, executive, judicial, or administrative.

6. If the executive is malfeasant in office, he

is subject to investigation, trial, impeachment, conviction, removal from office by operation of law at the instance of the Legislature. If the judge is malfeasant, he is subject in like manner. If the legislator is malfeasant, he is subject to investigation by his fellow legislators,—to trial before a Court (the judiciary), and, not least to retirement at the hands of the people at the polls. For it is the people themselves who are the grand "check and balance" in government, in America.

7. The principle of representation includes all the fundamentals of government in the American system. Thus economy, efficiency, protection, peace, prosperity,—indeed all the interests and activities, the conditions and qualities sought in government are sought in and by application of this principle.

8. Such realization of justice is sought,—for example:

(1) By open, fair and frequent elections.

(2) By limitation, by the people, of all powers granted by them to their representatives,—a limitation, or reservation of powers fully expressed by the Tenth Amendment.

(3) By adherence to "majority rule."

(4) By graduating taxation according to resources.[1]

(5) By maintaining between the States and the United States, what Lincoln called "proper practical relations."[2]

(6) By distinguishing at all times between permanent and temporary interests.[3]

(7) By securing, maintaining, and ever exercising a morality essential to the establishing of justice.

9. In order to establish justice, by and through a representative form of government such as ours, the people ordain and establish constitutions, enact laws, and render decisions.

Obviously many millions of people cannot themselves do this,—it must be done, if at all, by delegates elected for the special purpose.

10. To what extent the republican form of government may be carried, geographically, is not known. Montesquieu, the most eminent political writer of the eighteenth century, asserted in his *Spirit of Laws* that a confederated republic (such as ours) cannot extend over a large area because of jealousies inevitable among

[1] See the *Federalist*, No. XXX.

[2] Last public address, April 11, 1865, *Works* (Century Ed.), ii., 674.

[3] *Federalist*, No. LXIII.

the confederating States which will constantly tend to limit the extent of its jurisdiction.[1] Madison, explaining our American system,[2] replied fully to Montesquieu,—distinguishing between "a mere consolidation of States and a Union of States upon the principle of representation."

11. Whether this principle can be applied in a republic of the nations, a federation of the world,—or, as Tennyson expresses it,—"a parliament of man," is a problem which civilization alone can solve.

12. At present the supreme difficulty is the sovereignty of the several nations. For example, the sovereignty of the United States is exercised by its exclusive right (through the Congress) to coin money, or to declare war. Like sovereign powers are in every other nation. Were the nations of the earth to form a Federal Union, what becomes of these present sovereign powers? Is any nation willing and ready to surrender these? Is it possible to establish federal relations between the present several sovereign nations and some Supreme Union of all nations,

[1] The *Spirit of Laws*, Bk. IX., Ch. 1.
[2] *Federalist*, No. XIV.

—placing each present nation in "proper, practical relations" (federal relations) to the World-Republic?

13. The type, or model for such a republic is the United States to which the several nations would stand in such federal relations as the several States in the American Union stand to the United States.[1]

14. If ever such a World-Republic, or Empire, comes into existence, it will come by application of the principle of representation.[2]

[1] This is the subject of the immense literature about a "League of Nations." See especially vol. iv., No. 4, August, 1921, *A League of Nations*, World Peace Foundation, 40 Mt. Vernon Street, Boston, Mass. Also, *International Conciliation*, 407 W. 117th Street, New York City. Especially No. 169, *The Washington Conference on the Limitation of Armaments.*

[2] The Hague Tribunals, the League of Nations, the Disarmament Conference, all Arbitration Conferences in which a nation is a party, are monuments toward the realization of a world republic. The principles of American government are the main theme, in one form or another, of every publication on the subject. It might seem, at first thought, that all nations might federate, on the principle of representation, with respect to the three fundamentals mentioned by Jefferson: "Life, liberty, and the pursuit of happiness." This were easier if the several nations agreed as to these fundamentals. Differences of race, climate, institutions, customs, law,—*ideas* (in brief) are obstacles in the way of a world-republic. Whatsoever removes, or tends to remove or overcome these obstacles, contributes toward the formation of a world-republic. An instructor may, advantageously, call attention to the facts presented by history,—facts as to ethics, religion, politics, law, economics, sociology, etc. Examples abound at the present time.

APPENDIX

I. A Word About the Books

Books on government are documents, comments on documents, or both. Of books strictly documentary the instructor or general reader may not make use. Yet there are notably helpful books, chiefly of the third group, also reprints of documents with notes and bibliographies.

1. *The Constitution and Organic Laws of the United States*, 7 vols. Edited by Francis N. Thorpe, published by the Federal Government, 1909. This work reprints the State constitutions down to 1907; the enabling Acts for the States; the Acts creating the Territories, and many colonial charters. It contains no comments, but gives a bibliography of the constitutions. The Constitution of the United States (available from the Government and accessible in many reprints) finds official interpretation in the "Reports" of the Supreme Court of the United States,—some 230 octavo volumes. The decisions of essential importance are compiled (usually with brief bibliographical notes) in several editions of (so-called) "leading cases,"—commonly known as "Case Books" of which McClain's, Thayer's, Hall's, Wombaugh's, and

Boyd's are well known. The title is usually *Cases on Constitutional Law,* and the work is in one volume. (Thayer's in several, according to the edition.)

Federal (and some State) documentary matter of great value in the study of American government is reprinted and edited by William Macdonald in his *Documentary Source Book of American History, 1606–1898;* and in his *Select Documents Illustrative of the History of the United States 1776–1861,*—both volumes amply supplied with bibliographies, and explanatory notes.

Of similar editorial character is H. V. Ames's *State Documents on Federal Relations, States and the United States.* H. W. Preston's *Documents Illustrative of American History, 1606–1863, with Introductions and References,* belongs to this group of books. James D. Richardson's *A Compilation of the Messages and Papers of the Presidents, 1789–1897,* 10 vols. (published by authority of Congress), is the available source of its kind. The "messages and papers" later than 1897 (but not down to date) have also been compiled. Richardson has also compiled a similar collection of C. S. A. documents.

The treaties to which the United States is a party are reprinted, down to 1910, in *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers, 1776–1909,* 2 vols., 1776–1909, compiled by W. M. Malloy; Senate Document, No. 357, 61st Congress, 2d Session; Vol. III., compiled by G. Charles (supplement to Senate Document, No. 357, 1913). (Treaties since 1913 will be found in *The Congressional Record* of the date of the treaty.) Of books consisting essentially of comments on American Government (as of documents), the number is great and all which survive are of value.

First among these is the *Federalist* (1788), essays on the (then) proposed Federal Government, by Hamilton, Madi-

son, and Jay. H. C. Lodge's edition contains a critical essay on the authorship of the papers; P. L. Ford's edition has a bibliography, notes, and additional documentary matter. Ford's *index* is of great help.

Alexis de Tocqueville's *Democracy in America*, 2 vols., 1835 (many editions,—*i.e.*, translations from the French), describes the United States, its people, their government and institutions as they were down to the year of its composition. This classic work is now historical. Its philosophical character has long been acknowledged. It emphasizes (*inter alia*) the "town meeting."

James Bryce's *American Commonwealth*, 2 vols., 1888 (later editions; also in one volume), resembles De Tocqueville's work in being descriptive, philosophical, and readable. It was written with emphasis of the merits of the British,—the "Cabinet" system of representative government.

Of strictly technical treatises on our national government (the Constitution especially), Joseph Story's *Commentaries on the Constitution* (1833) (later editions; a standard work); Thomas M. Cooley's *Constitutional Limitations*, and his *General Principles of Constitutional Law in the United States of America* (1880) (later editions); and W. M. Willoughby's *American Constitutional Law*, 2 vols. (1920), are the principal.

Lalor's *Cyclopædia of Political Science, Political Economy and United States History* (3 vols.; revised edition) is a treasury of information, containing information on all important governmental issues in our history; also Hart and McLaughlin's *Cyclopædia of American Government.*

President F. J. Goodnow's *Comparative Administrative Law* (1893, 2 vols.; edition in one volume also) and his *American Administrative Law* remain the standard treatises on the subject.

The works in American history and biography are numerous. Of a documentary nature are the *Works* or *Writings* of American statesmen, comprising some 200 volumes. The *American Statesmen* series consist of brief biographies of the most eminent public men in our history. *The True Series* of American statesmen need not be ignored. W. G. Sumner's *Alexander Hamilton* may be read in course with Senator Lodge's *Hamilton* of the *American Statesmen* series. W. B. Munro's *The Government of American Cities* also his *Government of the United States* (textbooks) are masterly works. J. P. Cotton's *Constitutional Decisions of John Marshall* (2 vols., 1905; with notes) gives easy access to the governmental principles of the great Chief-Justice.

American history supplies innumerable illustrations and examples of the principles of American government applied. There is no one work, of an historical nature, which narrates the applications of these principles of government during the whole life of the Nation. The references by editors of our important state papers (documents) usually indicate where detailed narratives concerning the matter may be found. Bancroft's histories stop with the inauguration of Washington; Hildreth, with the Missouri Compromise, 1492–1820; McMaster, 1787–1861, with the Civil War; Schouler, 1783–1876, with the Centennial; Rhodes, 1850–1888, with Cleveland's Administration; Adams, 1801–1817, with the accession of Monroe. There are special histories of the making of the Constitution [Bancroft, Curtis (both strictly of the formation of the Constitution,—though Curtis's (last edition) includes some later questions); Thorpe (narrates the constitutional history of the United States to the adoption of the Fifteenth Amendment—see also his *Constitutional History of the American People, 1776–1850*, 2 vols., a narrative of State Constitutions and govern-

ment]. For histories of issues, movements, particular events, consult Hart's *Guide to American History* (last edition).

Of great value are current publications (newspapers, magazines, pamphlets, &c.) such as *The American Political Science Review* (each number contains valuable bibliography of current publications in the field of government); *The Annals of the American Academy; The North American Review; The Political Science Quarterly;* the Law Journals (Harvard, Yale *Review*, Boston, *American Bar Association Journal; Journal of International Law*, &c.).[1]

Of primary value in international law studies is Scott's *Cases on International Law.* Relevant articles in the encyclopædias (American, Britannica) usually conclude with a bibliography leading to quite all the authorities.

In the footnotes in the present volume references and citations are made to the principal writings on the subject in hand. The subject "government" is quite inexhaustible. In the present volume American government is the chief theme and of this government, federal, State, and local (city) the essentials, or fundamental principles are considered. Books of special value in the study of American government, include,—Alexander Johnston's (Edited) *Representative American Orations*, which illustrate American Political History (new edition, 4 volumes, by J. A. Woodburn); Charles W. Bacon and F. S. More's

[1] The instructor may advantageously bring to the class *The Congressional Record* or the State *Legislative Record*—in order to present the course of important current discussions. *The Congressional Record* contains sooner or later some account of quite every interest of the American people. Decisions of the Supreme Court of the United States are available shortly after they are rendered; new "Treaties" are printed in *The Congressional Record*, as they are made.

American Plan of Government; J. H. Dougherty's *Electoral System of the United States,* and *Power of the Federal Judiciary Over Legislation;* the Lincoln-Douglas *Debates* (various editions; see Putnam's); A. H. Snow's *The American Philosophy of Government;* E. G. Scott's *Constitutional Liberty;* William D. Foulke's *Fighting the Spoilsmen* (concerning the Civil Service); J. A. Woodburn's *The American Republic and Its Government,* and *Political Parties and Party Problems in the United States;* and the *Writings* or *Works* of American Statesmen,—notably Hamilton's and Jefferson's. (*Hamilton* edited by Lodge; *Jefferson,* by Ford). M. M. Miller's *American Debates;* E. G. Elliott's *Biographical Story of the Constitution;* O. S. Straus's *Origin of Republican Government in the United States.*

After all, the measure of success in class rests with the instructor. To him or her we there at last come. The living voice surpasses the mere textbook in informing power. The knowledge and the spirit of the instructor determine the character of the work done by the class and largely fix the boundaries as well as the standards of thinking by the class, at the time, and later. The rule should be *Multum,* not *Multa.*

APPENDIX II

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

(COMPARED WITH THE ORIGINAL IN THE DEPARTMENT OF STATE)

WE THE PEOPLE[1] of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of Members chosen every second Year by the People of the

[1] In the original the clauses are not numbered, nor is there any title to the document. It begins, "WE THE PEOPLE."

several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. [1]Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall chuse their Speaker and Other Officers; and shall have the sole Power of Impeachment.

[1] See Amendments XIII., XIV., XV., XVI.

SECTION 3.

1. [1]The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

2. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year; so that one third may be chosen every second Year; and if Vacancies happen by Resignation or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. The Senate shall chuse their other Officers, and also a President pro tempore in the Absence of the Vice-President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside:

[1] See Amendment XVII.

And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall, nevertheless, be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4.

1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5.

1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

3. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the

Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6.

1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

Section 7.

1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it,

with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment), shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8.

1. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7. To establish Post-Offices and Post Roads;

8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the Supreme Court;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16. To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States,

reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9.

1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3. No Bill of Attainder, or ex post facto Law shall be passed.

4. No Capitation or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties, in another.

7. No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10.

1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any title of Nobility.

2. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops or Ships of War, in time of Peace, enter into any Agreement or Compact

with another State, or with a foreign Power, or Engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

Section 1.

1. The Executive Power shall be vested in a President of the United States of America. He shall hold his office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3. [1]The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such a Majority,

[1] See Amendment XII.

and have an equal Number of Votes, then the House of Representatives shall immediately chuse, by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List, the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.

4. The Congress may determine the Time of chusing the Electors, and the day on which they shall give their Votes; which Day shall be the same throughout the United States.

5. No Person except a natural-born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice-President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability both of the President and Vice-President declaring what Officer shall then act as President, and such Officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be Increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period, any other Emolument from the United States, or any of them.

8. Before he enter on the Execution of his Office he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.

1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other Public Ministers, and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of the next Session.

Section 3.

1. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall commission all the Officers of the United States.

Section 4.

1. The President, Vice-President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1.

1. The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

1. [1]The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3.

1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two

[1] See Amendment XI.

Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

ARTICLE IV.

Section 1.

1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

Section 2.

1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

3. [1]No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

[1] See Amendments XIII., XIV., XV.

Section 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4.

1. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided

that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

1. The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Done in Convention by the Unanimous Consent of the

[1]States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth *In Witness* whereof We have hereunto subscribed our Names,

G:[1]WASHINGTON—*Presidt and deputy from Virginia.*

Attest William Jackson Secretary.

New Hampshire:
John Langdon
Nicholas Gilman

Massachusetts:
Nathaniel Gorham
Rufus King

Connecticut:
Wm: Saml. Johnson
Roger Sherman

New York:
Alexander Hamilton

[1] The word, "the," being interlined between the seventh and eighth Lines of the first Page, The Word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty-second and thirty-third Lines of the first Page and the Word "the" being interlined between the forty-third and forty-fourth Lines of the second Page.

[Note by Department of State: The interlined and rewritten words mentioned in the above explanation, are in this edition, printed in their proper places in the text.]

New Jersey:
Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

Pennsylvania:
B Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. Fitz Simons

Jared Ingersoll
James Wilson
Gouv Morris

Delaware:
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland:
James McHenry
Dan of St. Thos. Jenifer
Danl Carroll

Virginia:
John Blair—
James Madison Jr.

North Carolina:
Wm: Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina:
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia:
William Few
Abr Baldwin

[*Articles in Addition to and Amendment of the Constitution of the United States of America, Proposed by Congress and Ratified by the Legislatures of the several States, Pursuant to the Fifth Article of the Constitution.*]

(ARTICLE I.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (1789)

(ARTICLE II.)

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (1789)

(ARTICLE III.)

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor, in time of war, but in a manner to be prescribed by law. (1789)

(ARTICLE IV.)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (1789)

(ARTICLE V.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (1789)

(ARTICLE VI.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of Counsel for his defence. (1789)

(ARTICLE VII.)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be

otherwise re-examined in any Court of the United States, than according to the rules of the common law. (1789)

(ARTICLE VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (1789)

(ARTICLE IX.)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. (1789)

(ARTICLE X.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (1789)

(ARTICLE XI.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. (1798)

(ARTICLE XII.)

Section 1.

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President,

and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. (1804)

(ARTICLE XIII.)

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation. (1865)

(ARTICLE XIV.)

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in

any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

SECTION 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. (1868)

(ARTICLE XV.)

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2.

The Congress shall have power to enforce this article by appropriate legislation. (1870)

(ARTICLE XVI.)

The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States and without regard to any census or enumeration. (1913)

(ARTICLE XVII.)

Section 1.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislature.

Section 2.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

SECTION 3.

This amendment shall not be construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution. (1913)

(ARTICLE XVIII.)

SECTION 1.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2.

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress. (1920)

(ARTICLE XIX.)

SECTION 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation. (1920)

CASES CITED

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